

Worker involvement in the European Company (SE) A handbook for practitioners

—
Michael Stollt
and Elwin Wolters



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Foreword

It may be that 'your company' has just announced that it will convert itself into a European Company (SE) or you have been nominated as a member of a special negotiating body. Or perhaps you were asked to provide assistance to colleagues who are involved in setting up an SE. In that case, this is the handbook for you, because it has been designed first and foremost to help practitioners to prepare and conduct negotiations on agreements on employee involvement in SEs.

In October 2001, the EU formally adopted the legislation on the European Company, also known by its Latin name *Societas Europaea* (SE). It consists of a Regulation on the European Company Statute (EC 2157/2001) and an accompanying Directive on employee involvement within the SE (2001/86/EC). Since the entry into force of these two pieces of EU legislation three years later, companies can freely opt for this new corporate form. Throughout Europe, more than 900 SEs have been registered in the meantime.

The principal intention of the SE legislation on the part of the European legislator has always been to enable companies to operate more easily across European borders. However, it also opens up new possibilities for employee representation at European level. Indeed, the SE Directive takes worker involvement within multinational companies one step further. Before an SE can be registered, management and worker representatives have to negotiate an agreement on how the workers will be involved in the future SE. The scope of these negotiations includes not only the establishment of a transnational *information* and *consultation* body (SE Works Council) but also *participation* rights. Participation is understood as the right to elect or nominate some of the members of the SE's administrative or supervisory board.

The SE Directive reflects a European approach which considers employee involvement not only as an important element of the European social model but also as a firm part of its economic governance model. Art. 27 of the EU's Charter of Fundamental Rights recognises the workers' right to information and consultation within the undertaking at the same level as other civil and political rights. This notion is incorporated in the Lisbon Treaty in Art. 153 (1.f) where it is stated that the EU shall support and complement the activities of the member states in the following fields: *representation and collective defence of the interests of workers and employers, including codetermination*. Employee (board-level) participation is a well-established feature of many national corporate governance systems in the EU. Likewise, 18 of the EU27+3 countries (Iceland, Norway and Liechtenstein) have national legislation for board-level participation. Employee involvement, including representation in the company boardroom, thus represents a well-established and important element of social and economic Europe. The following quote from the final report of an EU-commissioned expert group (the so-called Davignon group) makes clear that worker involvement is not only an important social achievement but today also represents a commandment of economic rationality:

‘The type of labour needed by European companies — skilled, mobile, committed, responsible, and capable of using technical innovations and of identifying with the objective of increasing competitiveness and quality — cannot be expected simply to obey the employers’ instructions. Workers must be closely and permanently involved in decision-making at all levels of the company.’ (Group of Experts ‘European Systems of Worker Involvement’. *Final report*, 1997, p. 5)

Indeed, as was shown in the 2011 ETUI's *Benchmarking Working Europe* report (<http://bit.ly/qXOTSc>), countries with stronger involvement rights at different levels perform better on all of the eight *Europe 2020 headline indicators* than the group of countries with weaker involvement rights. In this sense, one can conclude that strong worker rights contribute to good economic and social performance.

In this context, it is important to emphasise that the initiative to start negotiations on arrangements for the involvement of employees in the SE has to come from the management side and involves the highest organs of the company. Contrary to a European Works Council (EWC), therefore, it is not a choice of the employees. However, once a company has announced its intent to set up an SE the employees' side should prepare itself properly. Indeed, the negotiations represent a challenge for employee representatives and trade unions, for several reasons:

- The setting up of an SE is a fairly complex and technical procedure. For local employee representatives it is usually a ‘once-in-a-lifetime experience’.
- The usual negotiation time of (up to) six months places responsibility on both sides to quickly reach an agreement on employee involvement. Without this, the SE generally cannot be registered.
- The negotiations bring together employee representatives from very different national backgrounds. For the success of the negotiations it is crucial that the worker side manages to speak with a single voice.

Evidence from SE case studies has shown that the SE can indeed bring innovation and progress to employee representation in companies. A good agreement lays down the foundations for a functioning and effective European level of interest representation.

The initial situation of the setting up of the SE is particularly important in this respect. The SE Directive basically only regulates the point of departure. For the employee representatives this means that they should try to negotiate ‘as many things as possible’ into the agreement in this particular situation before the SE is registered.

On the side of the European trade unions there is a clear will to take advantage of the potential benefits of the SE Directive. In 2008, the ETUC for this reason set up — by a unanimous resolution of its member organisations — the *European Worker Participation Fund (EWPF)*. The fund is financed by the (partial) transfer of the remuneration of SE board-level employee representatives. At the same time, a *European Worker Participation Competence Centre (EWPPC)* was set up and located at the ETUI. Financed by means of the fund, the EWPPC shall support employee representatives in the SE, be it negotiators, members of an SE Works Council or board members in fulfilling their task. Also, national trade unions can ask for funding of related activities. Therefore *SE practitioners* as well as their trade unions should not hesitate to make use of the expertise and assistance provided by the EWPF and the EWPPC (see pp. 98-100 and 101-102).

This handbook is one element in the EWPPC’s strategy aimed at ensuring that the opportunities provided by the SE legislation are seized. Since 2003, the ETUI — together with its SEEurope network (see p.102) — has been closely following developments in the field of the SE and has supported employee representatives and their trade unions on this issue. These experiences represent the basis of this book. Our aim was to make the handbook as practical as possible. At this point we would like to thank the members of the SEEurope network and the ‘SE practitioners’ who have provided us with feedback for their invaluable input.

The handbook is structured in terms of five main chapters. Chapters 1 and 2 introduce the SE and the mechanism of employee involvement. Chapter 3 provides ‘tips and tricks’ for preparing and negotiating an SE agreement. In Chapter 4 we have compiled a set of overviews, graphics and comparative tables, including basic information on the national industrial relations backgrounds. Chapter 5 presents further resources on which you might draw when preparing for negotiations. Finally, in the Annex the wording of the SE Regulation and the SE Directive are reproduced.

This handbook will not replace the necessity for legal and strategic advice during the negotiations. The employee side has the right to ask for experts financed by the company and should certainly make use of this possibility. Trade union organisations, both at national and European level, have gathered significant experience in negotiating SE agreements over the years. Their support can be of great value in the run up to and during the negotiations, in particular because management will also be assisted by specialised consultants.

The handbook is not meant to deliver a blueprint for how negotiations with management should be run. It also does not want to ‘instruct’ you on what you should or should not do. Every SE is specific and so will be its agreement on employee involvement. It was the intention of the SE legislation to provide local actors with the autonomy they need to negotiate an agreement on employee involvement that best fits their specific needs. We hope that the information provided in this book will

be useful for you and your colleagues to reach a substantive agreement that takes employee involvement in your company one step further.

Michael Stollt, Elwin Wolters
Brussels, October 2011

The European Company (SE)

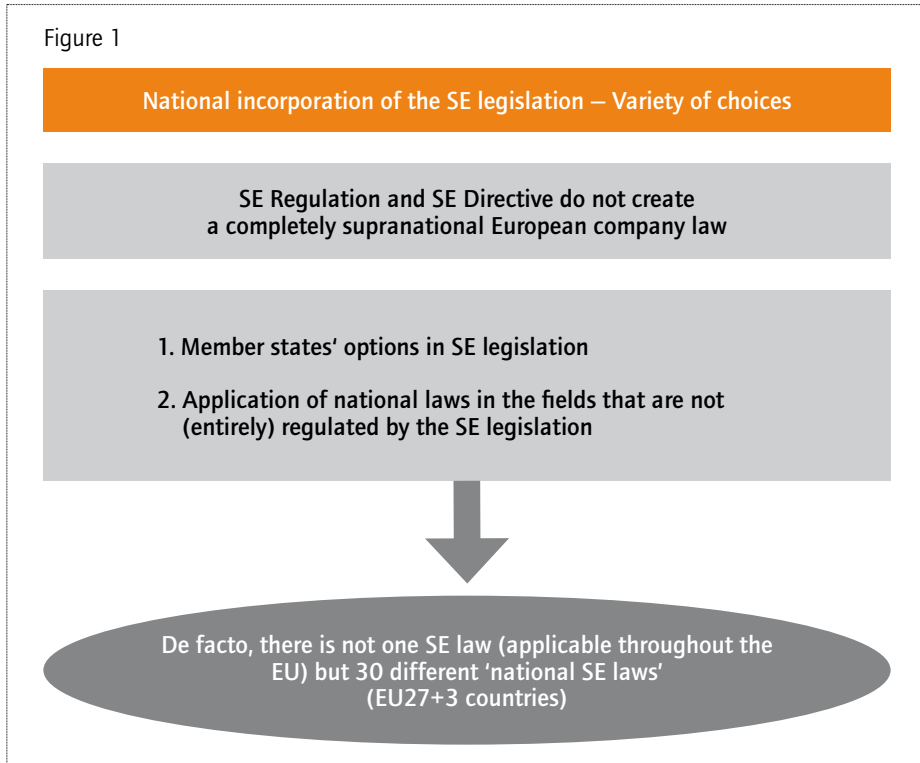
The SE in a nutshell

Since October 2004, companies have one more option when choosing a company form for their European business. Next to the well-known national company forms (such as a British plc, a French Société Anonyme or a German Aktiengesellschaft) a new supranational company form was created: the European Company (SE) is a commercial corporation set up in the form of a *European public limited liability company*. The abbreviation SE means Societas Europaea which is the (formal) Latin name for European Company. The main intention of the SE is to enable companies to operate their businesses on a cross-border basis in Europe under the same corporate regime.

An SE may be set up only within the territory of the European Union and the European Economic Area (EEA) countries Iceland, Liechtenstein and Norway (EU27+3). In other European countries — for example, in Switzerland — it is not possible to register an SE.

The framework for this new company form is laid down in two interrelated European pieces of legislation:

- The Regulation on the Statute for a European Company (EC 2157/2001) contains the legal provisions for the establishment and running of the SE (for example, capital requirements, registered office, legal basis, types of establishment, formation/structure of the SE, SE bodies and their respective competences).
- The Directive supplementing the Statute for a European Company with regard to the involvement of employees (2001/86/EC) deals with issues of transnational information, consultation and participation rights.



The 'SE project' has taken over 30 years to come to fruition. The original plan was to create completely independent EU-wide company legislation for the SEs which would be applicable across the European Community. Under that system, every SE – irrespective of the member state in which it was established – would have been exclusively subject to European Community legislation. This ambitious goal could never be realised because of differing opinions among the EU member states.

The SE Regulation and the SE Directive explicitly granted the member states many individual options. Therefore, SEs are, in many important areas, subject to the national legislation of the country in which they have their registered office. In 'transposing' both pieces of SE legislation into national legislation, the member states had some degree of flexibility. For some areas – such as fiscal law, competition law and bankruptcy law – the SE Regulation does not contain any provisions at all. That means that in these areas, the SE is subject to the 'regular' national and European legislation. In the areas where the SE legislative provisions are only partial, the legal provisions of the country where the SE has its registered office apply as for any other (national) company established in that country. In fact, there is therefore not one single SE law, but rather 30 different 'national' SE laws (EU27+3).

The SE Regulation entered into force on 8 October 2004. By that day, member states needed to have enacted the supplementary rules where the Regulation required it ('SE implementing legislation'). The same deadline applied for the national transposition laws of the SE Directive; however, not all member states implemented the Directive in time.

Every company established under the European Company Statute must be preceded or followed by the abbreviation SE. The capital of an SE is divided into shares and expressed in euros. Its minimum subscribed capital is EUR 120,000 (SE Regulation, Art. 4(2)).

The SE is registered in the member state in which it has its registered office. The registered office of the SE has to be located in the same country in which the (administrative) head office is located. Some member states additionally imposed on SEs registered in their territory the obligation to locate the SE's head office and its registered office in the same place (SE Regulation, Art. 7). Once the SE has been established it can transfer its seat to another EU/EEA member state. With the SE it is also possible to merge across borders.

An SE can choose between a monistic board structure (administrative board) and a dualistic board structure (management board and supervisory board).

An SE may in general not be registered unless an arrangement for employee involvement has been concluded. The SE's statutes may not conflict at any time with the arrangements for employee involvement (SE Regulation, Art. 12).

Figure 2

The European Company (SE) at a glance

SE = Societas Europaea

- A new supranational company form
- Possible since 8/10/2004
- A public limited liability company
- Governed partly by European law, partly by national law
- Set up within EU territory + Norway, Iceland, Liechtenstein
- An option for companies, not an obligation
- Company's name must be preceded/followed by 'SE'
- Minimum subscribed capital: EUR 120,000

High degree of cross-border flexibility and mobility

- Free choice of board structure: monistic (single-tier) or dualistic (two-tier)
- Possibility to merge across borders
- Possibility for a cross-border transfer of seat
- But: registered office must always be in the same member state as the head office

Obligatory European procedure for employee involvement

- Transnational information and consultation body (SE Works Council)
- Participation at board level (according to 'before and after principle')

Types of founding

The SE Regulation provides four different modes of SE establishment: Merger, Holding, Subsidiary and Conversion SE (SE Regulation, Art. 2). Depending on the concrete type of establishment, differing requirements exist for companies which want to set up an SE. All four modes of formation share the requirement of a cross-border element, namely that at least two of the companies involved must be subject to the legislation of different member states.

1. Merger SE (SE Regulation, Art. 17-31)

Public limited liability companies (PLC) from (at least) two different member states can establish an SE through a merger. This merger can take place in two different ways:

- by acquisition of a PLC by another PLC (for example, a French S.A. by an Italian S.p.A.): in this case, the company being acquired ceases to exist and the acquiring company takes the form of an SE;
- by creation of a new company resulting from the merger: in this case, the two merging PLCs both cease to exist.

The existing rights and obligations of the participating companies on terms and conditions of employment (national law, practice, employment contracts, collective agreements) are transferred to the SE.

Figure 3 Formation of a Merger SE. Acquisition (example)

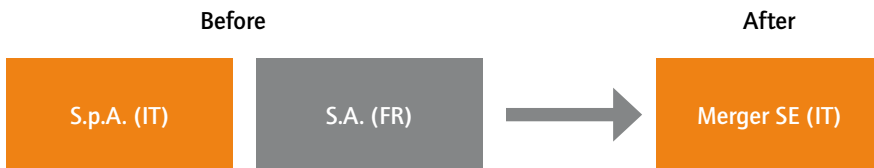
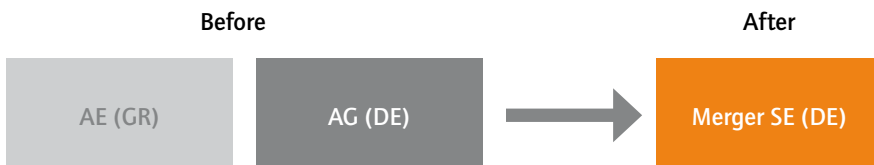
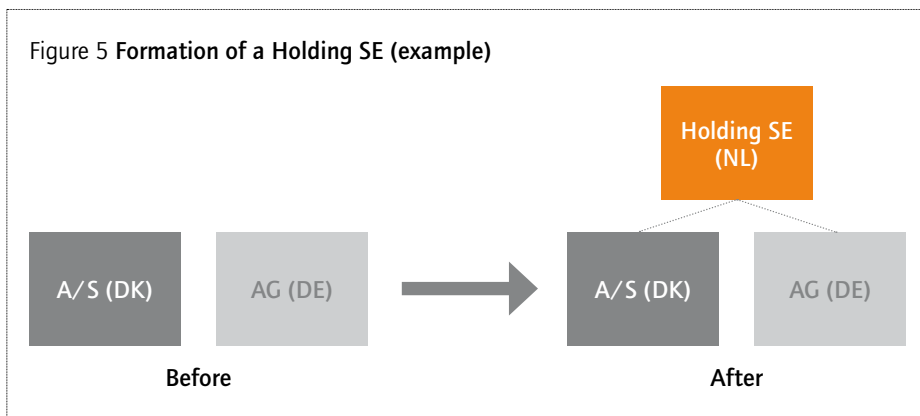


Figure 4 Formation of a Merger SE. New company SE (example)



2. Holding SE (SE Regulation, Art. 32-34)

Public limited liability companies and private limited liability companies can establish an SE by way of setting up a holding company. A precondition is that the participating companies come from at least two different member states or have had a subsidiary/branch office in another member state for at least two years. In the case of a Holding SE, the participating companies continue to exist – the SE is a new legal entity placed ‘on top’.



3. Subsidiary SE (SE Regulation, Art. 35-36)

Companies and legal entities governed by public or private law can set up a joint subsidiary in the form of an SE, as long as they come from two different member states or have had a subsidiary/branch in another member state for at least two years.

Later on, the SE itself can also establish subsidiaries in the form of an SE. Here no further cross-border element is needed because of the transnational character of the SE as such.

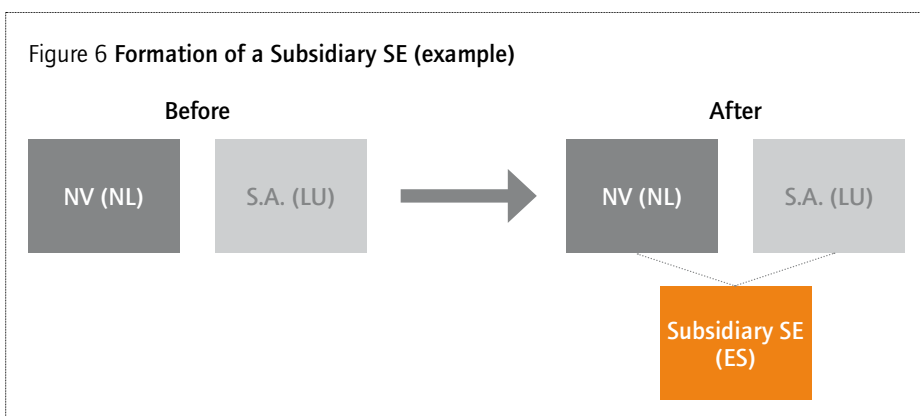
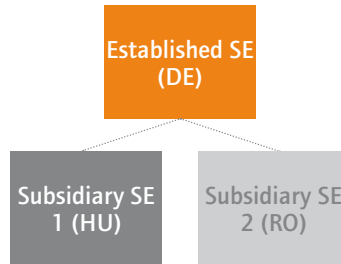


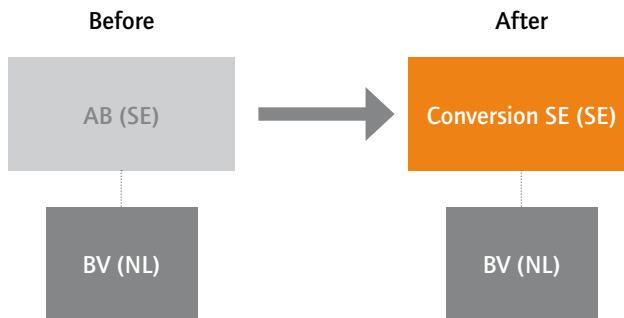
Figure 7 Formation of a Subsidiary SE by an SE (example)



4. Conversion SE (SE Regulation, Art. 37)

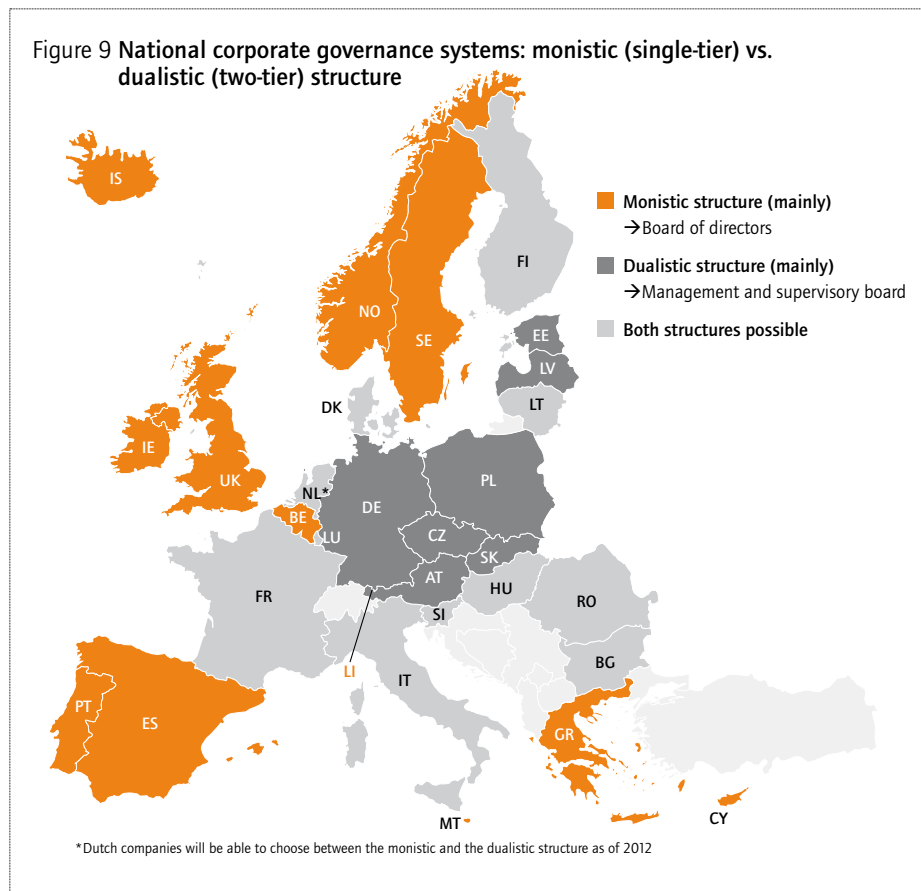
The possibility of converting into an SE is available only to public limited liability companies that have had a subsidiary in another member state for at least two years. A simple branch office is therefore not sufficient.

Figure 8 Formation of a Conversion SE (example)



The Annex of the SE Regulation (see pp. 133-135) contains a list of the national company forms corresponding to public limited liability companies (for example, société anonyme, Aktiengesellschaft, aktieselskaber) and private limited liability companies (for example, société à responsabilité limitée, Gesellschaft mit beschränkter Haftung, anpartselskaber).

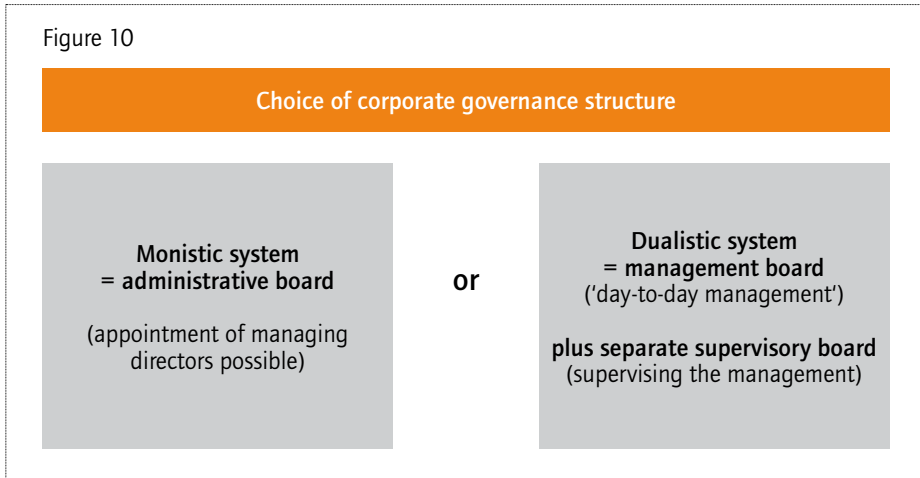
Corporate Governance: monistic or dualistic board structure?



In Europe, two different corporate governance systems can be found: (1) the monistic system with a single administrative board (*board of directors*) directing the company's business and (2) the dualistic system with, on the one hand, a *management board* responsible for the day-to-day business and, on the other hand, a *supervisory board* monitoring the management board. So far, the choice of board structure largely depended on the legal provisions in the different countries (see figure 9). Only in some member states did companies already have the choice of selecting freely between the monistic and dualistic models (for example, in France, Finland, Hungary and Italy).

Irrespective of the member state in which the SE is established, an SE can freely choose between a monistic or dualistic board structure. This also applies to countries where for national company forms such a choice does not exist.

As regards the structure of the SE the SE Regulation lays down the following principles:



Dualistic SE (SE Regulation, Art. 39-42)

A dualistic SE has two boards: the **management board** is responsible for managing the SE; the **supervisory board** supervises the work of the management board. It may not itself exercise the power to manage the SE.

The management board shall report to the supervisory board at least once every three months on the progress and foreseeable development of the SE’s business. Additionally, it has to promptly pass on any information on events that are likely to have an appreciable effect on the SE. Moreover, the supervisory board can always require the management to provide information it needs to exercise supervision and undertake investigations.

The members of the supervisory board are appointed by the general meeting of shareholders (without prejudice to arrangements on employee participation). For employee representatives a different appointment procedure might apply, for example, an appointment by the (SE) Works Council or other election/nomination bodies (see p. 54-55).

The members of the management board are appointed and removed by the supervisory board. The number of board members is laid down in the company statutes. It is not possible to be a member of both bodies at the same time. The chairman of the supervisory board is elected from among its members. If the employees appoint half of the board members, the chairman can only be a member who was appointed by the general meeting of shareholders (that is, a shareholder representative and not an employee representative).

Monistic SE (SE Regulation, Art. 43-45)

In a monistic SE, an **administrative board** manages the SE. Its members are appointed by the annual general meeting of shareholders. The member states had

the choice to decide that one or more managing directors are responsible for the day-to-day business. In this case, the management board consists of the executive directors (responsible for day-to-day business) and the non-executive directors.

The board meets at least once every three months to discuss the progress and foreseeable development of the SE's business.

The number of board members is laid down in the company statutes. The chairman is elected from among the members of the board. If the employees appoint half of the board members, the chairman can only be a member which was appointed by the general meeting of shareholders.

Impacts for employee participation

No influence in the choice of the board system

The decision on the board system (monistic or dualistic) is taken by the general meeting of shareholders. It is enshrined in the SE's statutes and is not part of the negotiations between the management and the employee representatives. Thus, formally employees do not have a say in the choice of the board system (and, consequently, whether they will afterwards be represented on an administrative or a supervisory board).

No possibility to 'block' board decisions

Neither in a monistic nor in a dualistic SE, can the worker side ultimately prevent a board decision from being taken as long as the shareholder representatives act as one. Where half of the supervisory board consists of employee representatives, the chairman has a casting vote in the event of a tie (SE Regulation, Art. 50 (2)).

Rights of the board

The SE's statutes shall list the categories of transactions which require prior authorisation by the supervisory board (dualistic SE) or an explicit decision by the administrative board (monistic SE). In some member states, the supervisory body can itself make certain categories of transactions subject to authorisation. Moreover, member states could also determine a list of such categories for SEs registered in their own territory (see SE Regulation, Art. 48). The concrete rights of the board therefore largely depend on the country where the SE is registered and the SE's statutes.

Same rights and duties

The employee board-level representatives have the same rights and obligations as the members representing the shareholders, including the right to vote and remuneration. All board members have a duty of confidentiality and are not allowed to disclose information which might harm the company's interests (for details, see Art. 49 of the SE Regulation).

Cross-border transfer of seat

The idea of the SE is to provide the company with a large degree of flexibility and mobility within the European internal market. For this reason, the SE can transfer its

seat to a different member state. This transfer of seat does not result in the winding up of the SE nor in the creation of a new legal person (SE Regulation, Art. 8). Three restrictions have to be kept in mind:

- The registered office must remain in the country where the SE's head office is located. That means also the head office (administrative seat) must be relocated.
- The SE regulation does not allow the transfer of seats outside EU/EEA territory (for example, to the Cayman Islands or to Switzerland). In this case the SE is dissolved.
- A public limited liability company which converts into an SE is not allowed to transfer its registered office at the same time as the conversion is effected (SE Regulation, Art. 37). The Directive thereby wants to ensure that the transfer of seat is not used to 'escape' from an existing participation arrangement. Once the SE is established it can, however, move its seat to another country (the participation arrangement will continue to exist).

Company motives for setting up an SE

When management has disclosed its plans to establish an SE it is also important for the employee side to trace or investigate the reasons for the SE founding. The choice of the SE structure is often part of a series of considerations within the framework of a 'business case'. Various motives are possible for a management's choice of the SE as a legal form and some could affect workers' interests, such as a 'freezing' of participation rights (see below). This information could be very useful in understanding certain proposals and could strengthen the negotiating position. In an analysis of the motives officially mentioned by the companies from already established SEs,¹ several key motives can be identified:

European image / identity

This motive is often used as an argument by companies that change into an SE. The idea is that the SE form better reflects the European activities (or ambitions) of the company and therefore would strengthen its European identity, thereby also influencing the customer and market perception of their company. Nevertheless, in most cases the European image in practice is used as an 'accessory' argument and is not the trigger motive for the establishment of an SE.

Enhanced cross-border mobility

- The possibility to transfer the registered office to another country represents an important advantage for choosing the SE as a legal form (for the number of SEs which have already transferred their seat, see p. 90). With the SE, companies can move more easily from one member state to another.
- Another related advantage of the SE was that it made cross-border mergers much simpler in contrast to the existing complex national rules and regulation. However the implementation of the EU Cross-Border Merger Directive took away this unique feature of the SE (see p. 20).

¹ European Company (SE) Database, <http://ecdb.worker-participation.eu>, data as of 1 September 2011.

Flexibility with regard to corporate governance

The SE provides flexibility with regard to the choice between a monistic and a dualistic board structure (see pp. 15-17). In this way, for example, a company could harmonise its corporate governance structures across Europe. Also the unification of management and reporting systems might be intended.

Several companies also positively highlighted the possibility to negotiate a tailor-made agreement on European employee involvement in their company (including a Europeanisation of the board members appointed by the workforce).

Cost savings

One can assume that every company intending to set up an SE has undertaken a cost-benefit analysis. Whether the SE structure can contribute to a significant reduction of costs cannot be generalised. Nevertheless, an SE might save costs, for example, by streamlining its management structures and by dissolving (some) of its national subsidiaries (see p. 29). Furthermore, the SE could be used to transfer the seat to a member state with more 'favourable' tax arrangements.

Reduction of employee involvement rights?

Normally a company would not publicly mention the reduction of employee rights as a motive (not least because the purpose of depriving employees of rights to employee involvement is considered a misuse of the SE Directive).

Particularly sensitive in this respect are national (board-level) participation rights. Whereas the SE Directive by and large safeguards existing rights, in practice the SE might result in a 'freezing' of the existing participation status. Although not a general trend, this phenomenon was partly observed in some SEs based in Germany: a national company coming close to the German 500-employee threshold beyond which participation must be introduced can convert into an SE. In accordance with the 'before and after principle' it is not obliged to grant its employees participation rights, even if the workforce afterwards grows beyond 500 employees. Another relevant mark in this respect is the 2000-employee threshold, beyond which the percentage of board members nominated by the employee side increases from one-third to 50 per cent of the supervisory board members. A critical point here concerns the position of trade unions in German companies with board-level participation: where the employee side has 50 per cent of members the law also provides seats for full-time trade union officials to represent employees' interests, but from a more external perspective. Companies are able to avoid this type of representative by 'freezing' their current participation status before their workforce exceeds 2000 employees.

A further possibility for companies is the reduction (or 'freezing') of the size of the board. Whereas, for example, in Germany, according to the law, board size increases with the workforce, such rules do not exist for SEs. A number of companies have made use of this possibility to decrease (or to 'freeze') the size of their supervisory board. Whereas the proportional division of seats remains untouched, this in practice reduces the number of employee representatives, thereby making the Europeanisation of board-level participation more difficult.

Alternatives to the SE

As already mentioned, the question of whether a company ‘goes’ for the SE or not represents the result of an individual cost-benefit analysis and a weighting of the (expected) advantages against the (suspected) disadvantages. And of course this includes comparison with existing alternatives to the SE. The SE project took more than 30 years to see the light of day. In the meantime, companies had to find other ways to organize their business across European borders. Many companies will simply be satisfied with the structure they have worked out for themselves over the years and don’t see the need to change to something new. Moreover, some of the original aims of the SE statute have not been realized in the compromise finally reached. This particularly applies to the idea to have exactly the same SE rules applying in all member states. Today there is not one SE law but rather 30 national SE laws. Important issues (such as taxation) are entirely regulated by the member states in which the SE has its registered office, thereby significantly reducing the attractiveness of the SE. Moreover, persisting legal uncertainties might contribute to a decision against the SE. Likewise, one has to keep in mind that the setting up of an SE generates initial costs (for example, for legal advice).

Some company lawyers have claimed that the complex and time-consuming procedure for employee involvement represents a key ‘negative driver’ (disincentive) for the SE. While this might have played a role in individual cases there is no empirical evidence supporting this argument. Several negotiators have clearly said that the procedures are not long if there is understanding from both sides that the employee involvement is not a simple add-on (or just a technical necessity needed for registration) but represents a key feature of the SE. Against this background the existing procedures rather seem appropriate to ensure workers’ voice in the future SE.

Since the entry into force of the SE legislation in October 2004, several legal alternatives have been proposed and partly already implemented. All of them (would) take over some of the flexible arrangements of the SE. These (possible) ‘competitors’ of the SE are:

Cross-Border Merger Directive (10th Directive)

This Directive — in force since December 2007 — makes cross-border mergers of limited liability companies easier. Contrary to the SE, the company resulting from the merger will be covered by the law of the country where it has its registered seat. To safeguard existing participation rights the 10th Directive by and large refers to the mechanism used in the SE. However, there are certain less favourable solutions, such as the possibility for the relevant organs of the merging companies to directly apply the standard rules without any prior negotiations.

European Private Company (SPE)

This new legal form is still in the pipeline and under debate between the member states. The SPE is intended mainly for small and medium-sized companies (SMEs), but there is no reason why large companies will not use it (instead of the SE). From an employee perspective one fear related to the SPE is that it could be used to avoid national rules on worker involvement.

Cross-border Transfer of the Registered Offices of Limited Liability Companies (planned 14th Company Law Directive)

This Directive would make it possible for companies to transfer their registered seat – their legal headquarters – to another place in the EU. This implies serious risks for worker participation rights which need to be tackled in a future Directive. Currently, it is not possible to predict when or even whether the 14th Directive will be adopted.

Moreover, in the past decade the European Court of Justice has made a series of rulings in the context of freedom of establishment and the transfer of a company's de facto head office to other member states. These decisions also raise some serious concerns with regard to national participation standards. More details on these alternatives to the SE can be found in, for example, the article by Robbert van het Kaar in *Transfer* (17/2, pp. 193-201).

Finally, it should be mentioned that the simplification policy that characterises current national and EU company legislation has led to national reforms of company law that might influence the choice between opting for the SE statute or staying with the national statute (see Cremers and Wolters, *EU and national company law – fixation on attractiveness*, ETUI Report 120, 2011).

Employee involvement in the SE

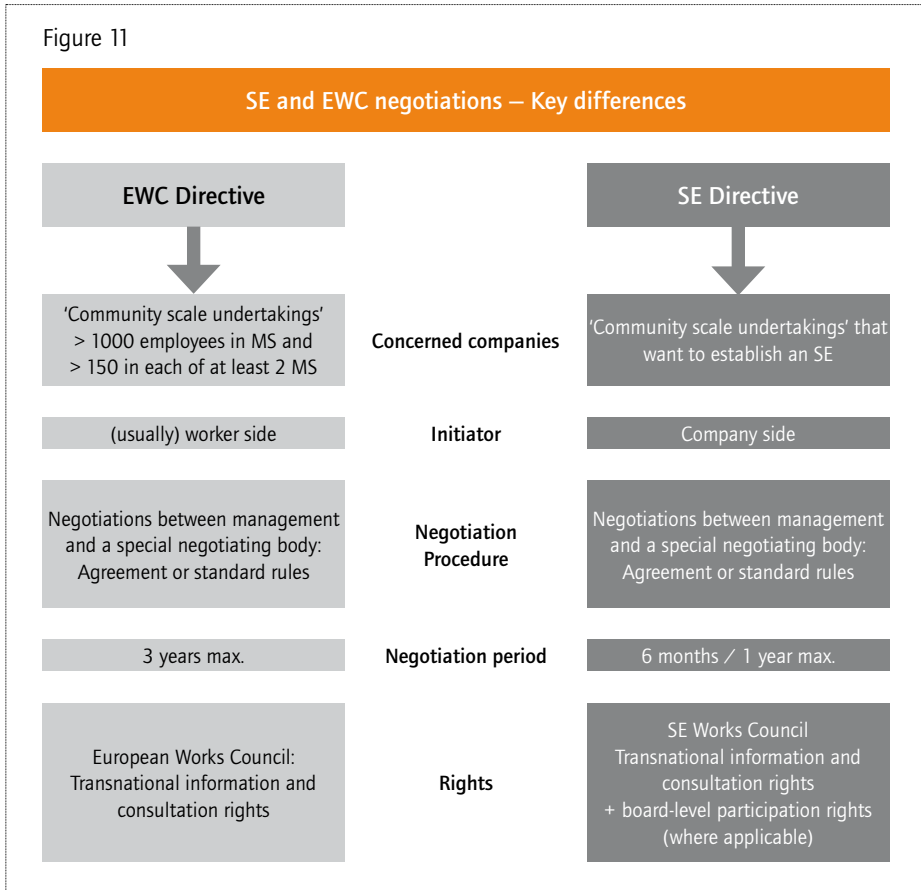
Rights granted by the SE legislation

An SE generally cannot be established without an agreement having been reached on the issue of employee involvement. The procedure resembles the European Works Council (EWC) Directive: instead of prescribing detailed provisions on how employees have to be involved, the SE Directive provides for an agreement negotiated between the management of the participating companies and a special negotiating body representing the employees. Additionally, it provides for obligatory standard rules in cases where the negotiating partners fail to reach an agreement. There is a major difference with the EWC procedure: no initiative by the employees is needed. In fact, it is the management or administrative board of the participating companies which have to take the necessary steps to start — as soon as possible — negotiations with the representatives of the companies' employees on arrangements for the involvement of its employees. This is also in their own interest because the SE cannot be registered before negotiations have taken place (see chapter on possible outcomes of the negotiations).

The SE Directive provides first of all transnational information and consultation rights. In general a *representative body* — the so-called SE Works Council (SE-WC) — is set up which represents the information and consultation body of the SE's workforce at European level.² It meets at least once a year with management to discuss company and employment issues. Most of the SE Works Council's rights resemble those of a European Works Council. The exact wording of the SE Directive regarding information and consultation is as follows:

2 The SE Directive alternatively allows the establishment of information and consultation procedures instead of an SE-WC body (an option which is usually not advisable from an employee point of view).

Figure 11



Information: "The informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE [...] at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE." (SE Directive, Art. 2(i))

Consultation: "The establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE." (SE Directive, Art. 2(j))

Moreover, the SE Directive defined (board-level) participation rights in a European context for the first time and made them a key part of the negotiations between employee representatives and the management of the companies involved in a planned SE. A company is only obliged to grant participation if the employees had this right before (so-called before and after principle). However, on a voluntary basis the company can provide this right also if there was no participation before.

Participation: “The influence of the body representative of the employees and/or the employees’ representatives in the affairs of a company by way of:

- the right to elect or appoint some of the members of the company’s supervisory or administrative organ, or
- the right to recommend and/or oppose the appointment of some or all of the members of the company’s supervisory or administrative organ.” (SE Directive, Art. 2(k))

The Special Negotiating Body (SNB)

Once the management has disclosed its plan to establish an SE, it must promptly provide extensive information to the employees and/or their representatives in all companies affected. Associated with this is the request to the employees to set up a so-called *special negotiating body* (SNB). The SNB consists of nationally selected employee and trade union representatives from the different member states concerned. It represents the employees in the negotiations with the participating companies in order to reach an agreement on the involvement of employees in the coming SE.

The SNB is the only body which is authorised to negotiate on behalf of the workforce. An existing EWC cannot take over the role of the SNB. The SNB is not to be mixed up with the later cross-border information and consultation body, the SE Works Council. An existing European Works Council will later on be replaced by the SE Works Council (unless the SE agreement states something else). Nevertheless, the EWC can represent an important resource for the negotiations (see chapter ‘Tips and tricks’)

Composition of the SNB and selection of its members

According to Art. 3(2) of the SE Directive, the seats are allocated proportionally among the member states in which the participating companies and concerned subsidiaries or establishments³ have employees. For every 10 per cent (or fraction thereof) of the total number of employees of the future SE/SE group, the country has the right to send one member to the SNB (even if there is only a single employee in this country). Thereby, all countries concerned will have at least one representative on the SNB (for a sample calculation see p. 49).

In the case of an SE established through a merger, provision is made for additional seats. This is to ensure that every company that vanishes due to the merger is represented by at least one representative. The number of additional seats cannot, however, exceed 20 per cent of the total original number.

3 ‘Participating companies’ means the companies directly participating in the establishing of an SE; ‘subsidiary’ of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC; ‘concerned subsidiary or establishment’ means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation; SE Directive, Article 2

The member states had to decide how the national SNB members are elected or appointed. Furthermore, the member states could provide in their national transposition law that representatives of trade unions are allowed to become SNB members even if they are not employees of the company (SE Directive, Art. 3(2.b)). Because of this national transposition the rules differ in member states. For details on how the members are selected in the different member states see overview on pp. 52-53.

SNB costs and access to external expertise

As a general rule, the costs of the SNB are covered by the companies involved. The SNB can request that experts of its choice assist it in its work. In this context, the Directive explicitly mentions the representatives of European trade union organisations. Most member states have limited the company's funding obligations to one external expert.

Duration of negotiations

The negotiations between the management and the SNB may take up to six months (from the SNB being set up) and can be extended by a maximum of six further months if both parties wish so (SE Directive, Art. 5). For comparison: the EWC Directive allows a time frame of three years maximum.

Possible outcomes of the negotiations

There are three possible outcomes of the negotiations:

1. SNB decision not to open or to terminate negotiations

The SNB can decide by two-thirds majority to terminate ongoing negotiations with the management. Before they begin, it can also be decided not to open negotiations. In these cases the employees will be entitled to national information and consultation rights only. The SE will then be subject to the European Works Council Directive (SE Directive, Art. 13(1)), and thus an EWC can be set up if the requirements of the EWC Directive are fulfilled.

Even for this kind of decision to be taken, the SNB must first be set up. It is not possible for an existing European Works Council to take the decision.

The SNB is obliged to open and is not allowed to terminate negotiations in the case of a company with participation rights that wishes to convert into an SE (SE Directive, Art. 3(6)).

Option 1 is in general not advisable. The SNB should always start negotiations and not abort them (for details see point 'Taking up and not terminating the negotiations' on p. 37).

2. Conclusion of an agreement between management and SNB

The ‘usual’ outcome of negotiations is that the two parties conclude an agreement on how the SE’s employees will be involved in the future SE. These rights include cross-border information, consultation and (as far as agreed) participation rights. The parties have substantial leeway on the actual content of the agreement (SE Directive, Art. 4).

Recommendations for the possible contents of such an agreement are provided on pp. 41-48 and 63-66. The employee representatives in the SNB should know well their rights under the standard rules because they can serve as a kind of minimum standard for negotiating an agreement (see pp. 58-62).

3. Application of the standard rules

The Annex of the SE Directive contains so-called standard rules which provide legal fallback positions on cross-border information and consultation rights (Part 1 and 2) and on board-level participation in the SE (Part 3).

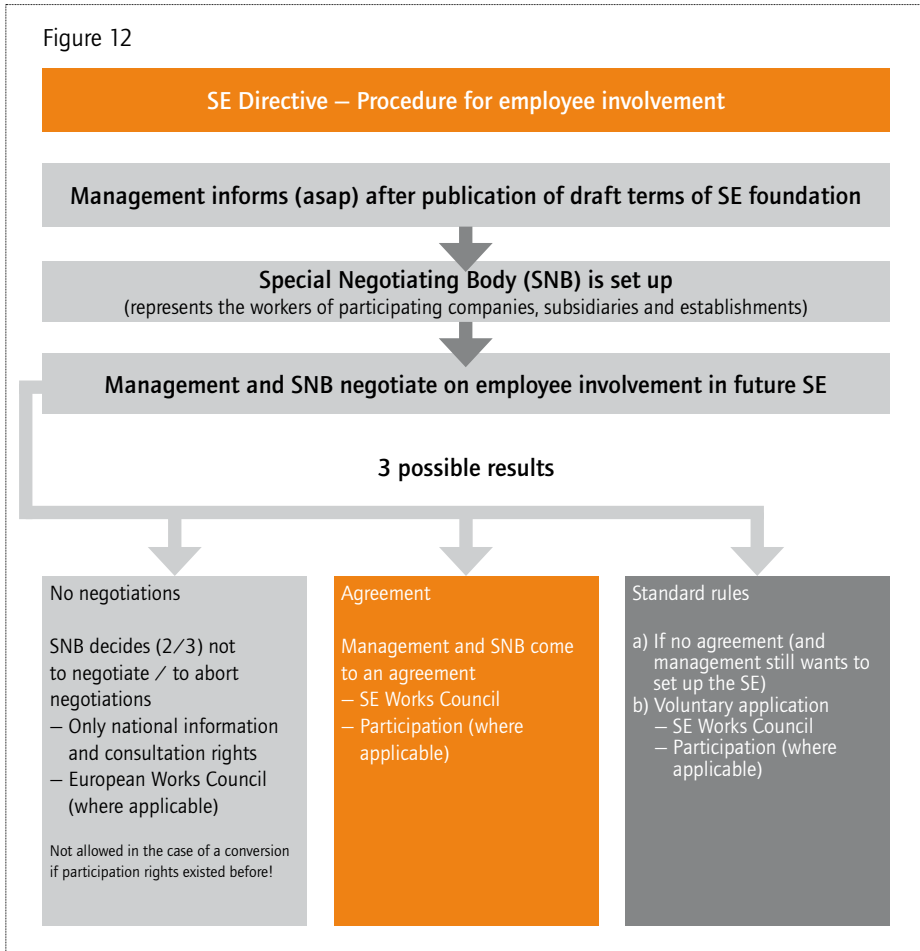
The standard rules apply in two cases (SE Directive, Art. 7(1)):

- a) if both parties so agree or
- b) if the parties fail to reach an agreement within the time specified.

Whereas the standard rules on cross-border information and consultation (Part 1 and 2) are applicable for all companies, specific rules exist for the standard rules on participation at board level (Part 3). This part of the standard rules is governed by the so-called before and after principle. Simplified, the rule is that Part 3 of the standard rules is applied if participation rights previously existed in any of the participating companies. Previously existing participation rights at national level are therefore in general protected. Conversely it means that there is no obligation to apply Part 3 if none of the participating companies had participation rights before.

There exist further specific requirements depending on the way of founding (merger, holding, subsidiary or conversion), details on the before and after principle can be found on pp. 61-62.

The application of the standard rules (cross-border information and consultation, plus where applicable also participation rights) represents the minimum which can always be requested by the SNB. The company can in fact only prevent their application (case b) by abandoning the SE project. It is always the specific standard rules of the country in which the SE will have its registered office which will be applied. These might differ from one country to another.



A detailed flowchart of the negotiation procedures can be found on p. 51.

National rights to information, consultation and participation

In principle, the SE Directive does not touch on national information and consultation (and workplace co-determination) rights. Local rights of a works council or a trade union representation are therefore in general not affected by the SE founding (for an exception see special case below). The SE Works Council also does not replace any existing national representation structures. Instead it creates an additional level of European information and consultation rights.

With regard to (board-level) participation rights, the situation is more complex. If, for example, an SE is set up in the form of a newly founded holding SE on top of the national subsidiaries, the board representation in the national subsidiaries remains untouched. In the situation of a company being converted into an SE, the participation on the newly SE board replaces the previous already existing national participation

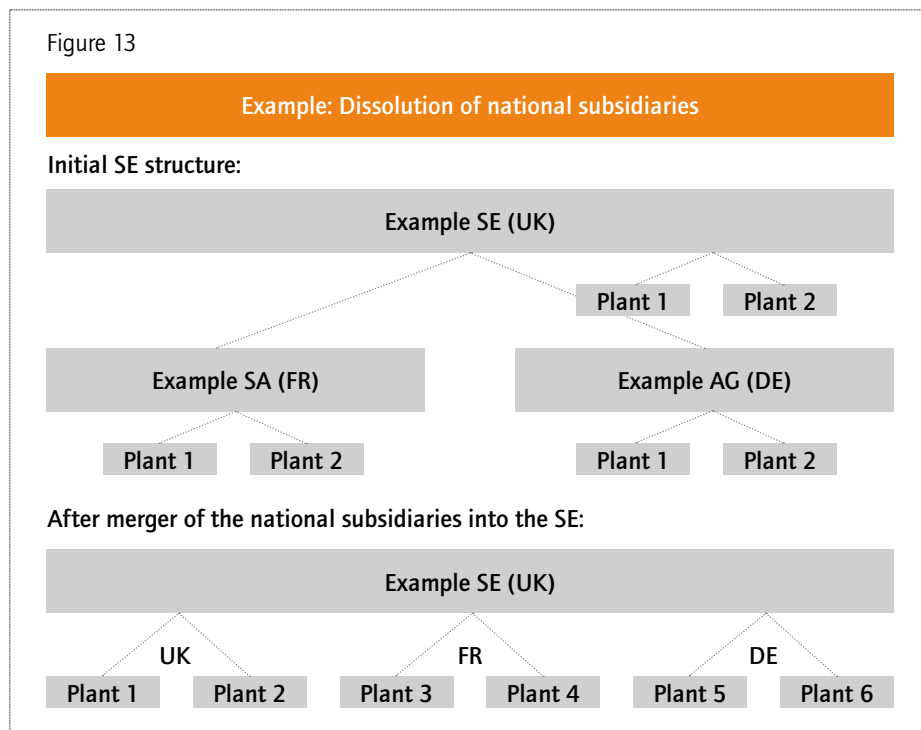
regime. National subsidiaries of an SE, however, will continue to be subject to the national participation rights of the country in question. For example, participation may take place in the highest board of an SE group and at the same time on the board of its national subsidiaries (to which national law continues to apply).

Special case: Dissolution of national legal entities

An SE does not need to have legal entities in every country it operates in. It can also work with establishments/branch offices instead by merging national legal entities into the parent (SE) company. This can happen during the SE foundation (Merger SE) but also later on when the SE is already operating. The absence of a legal entity can indeed have an impact on national rights: for example, if a national subsidiary ceases to exist as a legal entity the board-level participation in the subsidiary ceases as well. There is then only participation in the parent (SE) company. In such a situation, also other national rights granted to the union and/or works council that require the existence of a national legal entity may be threatened.

In order to preserve existing national involvement rights, the member states had the option to lay down a provision in their transposition laws that the structures of employee representation in companies which will cease to exist as a separate legal entity are maintained after the registration of the SE (SE Directive, Art. 13(4)).

Figure 13



Structural changes triggering (new) negotiations

The SE Directive lays down a procedure for negotiating employee involvement before the SE is registered. However, under what circumstances is there a right to renegotiate after the SE has been set up, for example, if there are considerable structural changes within the company afterwards? One example would be that the SE afterwards acquires another company where the workforce has not been involved in the negotiation of the original agreement.

Unfortunately, the SE Directive remains rather vague in this respect. It states only that the agreement should lay down its duration and 'cases where the agreement should be renegotiated and the procedure for its renegotiation' (SE Directive, Art. 4(2)(h)). Most member states have included similar clauses in their national transposition laws; some member states have inserted more precise safeguards (for a comparison: <http://comparese.worker-participation.eu>). For this reason, it is crucial to have a clear procedure for renegotiations and a definition of structural changes contained in the agreement.

If the SNB decides not to start or abort negotiations, it can be reconvened at the earliest two years after this decision (unless both parties want to start negotiations earlier). For such a decision at least 10 per cent of the SE's concerned workforce or employee representatives is required. However, there is one important difference: if the SNB and the management reach no agreement the standard rules do not apply (SE Directive, Art. 3(6 last sentence)).

Special case: The right to start negotiations in formerly employee-free SEs

The practice of many national registries shows that a lot of SEs have been registered which do not have any employees. Indeed in some countries, companies have specialized in the creation of so-called shelf companies which have neither business activities nor employees at the moment of founding. Later on, these 'ready-made' SEs are sold to a new owner which then 'activates' the company by transferring employees into the SE.

In such SEs by definition no negotiations on employee involvement could have taken place prior to its registration. The important question therefore is: What happens once a formerly employee-free SE starts having employees? In the absence of a clear rule in the SE legislation, a German court stated that when an employee-free SE afterwards gets employees it has to start negotiations (OLG Düsseldorf, 30.3.2009, I-3 Wx 248/08). So even if the setting up of an SE without employees is a common practice, this does not free the SE from the requirement to catch up negotiations once it starts having employees.

Negotiating an SE agreement: Tips and tricks

Preparing and conducting negotiations on an SE agreement

In this chapter we point out some important aspects to be considered when it comes to the preparation and conduct of negotiations. The recommendations presented in this section are largely based on the experience and analysis of ‘SE practice’ over recent years. The quotes from practitioners throughout this chapter represent further suggestions based on their personal experiences.

Preparing as early as possible for the negotiations

Before the company management officially announces that an SE is to be established, the employee representatives, their trade unions and/or any pre-existing EWC will probably already have addressed the issue internally. At this stage it is not always clear who should take the lead on the workers’ side, as the initiative for the negotiations has to come from the management. We recommend to use, as much as possible, the European trade union structures and the informal links between existing worker representative bodies as building blocks for provisional meetings and contacts. In practice, informal steering groups have proven to be of inestimable value. They should certainly begin their own preparations for the application of the SE legislation as quickly as possible. There is little point in waiting until the company has published its plan to establish an SE and is legally obliged to provide the necessary information to its employees. Share this information with colleagues from all countries, so that they can all start their preparations.

Seeking expertise

For most company employee representatives, the setting up of an SE is a completely new situation. The procedures in the SE legislation are rather complex and technical. Usually, the employer side will be assisted by specialized law firms which already have experience in setting up SEs and negotiating SE agreements. To counterbalance this knowledge advantage the employee side should seek internal and external expertise (for example, on legal and strategic matters) at an early stage.

Trade unions can play an important supportive role in the negotiations. Many trade union organisations at both national and European level have over the years gathered significant experience with SE negotiations. Take into account that the European legislator has confirmed the role that recognised trade union organisations can play in negotiating and renegotiating agreements, and in providing support to employees' representatives who express a need for such support (in recital 27 of the EWC Directive). They can directly support the local employee representatives and/or recommend qualified experts (see list of European trade union federations on pp. 104-106). For this reason it is advisable to inform the trade unions at national and at European level at an early stage to enable them to support and monitor the process and promote best practice.

Having a look at already existing SE agreements and contacting involved negotiators are certainly also helpful for enlarging knowledge about the possibilities in negotiations and the final agreement.

The companies are obliged to pay the costs of at least one (permanent) expert for the SNB. The SE legislation of the country where the future SE will have its registered office determines whether further experts can be funded. The choice of experts is entirely at the discretion of the SNB. It could be an advantage to choose an expert from the country where the headquarters of the SE will be located. That is because mostly the SE legislation of this country will be applied. Experts can participate in negotiations in an advisory capacity if the SNB wishes. National and European trade union representatives can even be full members of the SNB (with voting rights), if the national legislation implementing the Directive provides this option.

Receiving necessary information

The company management is obliged to provide employees with the necessary information without further request. In particular, the following information should be listed:

- Names and structure of the participating companies, concerned subsidiaries and/or establishments and their distribution among member states.
- Number of employees in the different companies and concerned subsidiaries/establishments and total number of employees per country.
- Existing employee representation structures (for example, works councils, trade union representations), preferably including the names and contact details of the employee representatives, and the number of employees represented by these bodies.
- The name of the companies where participation arrangements exist, the names and contact details of the board-level employee representatives and the number of

employees covered by such arrangements in each case, as well as the proportion of employees covered in relation to the total number of employees.

Management has to provide this information unsolicited and without delay following disclosure of the planned SE. The information has to be sent to the employees' representatives of the participating companies, its concerned subsidiaries and establishments or, if no such representatives exist, the employees themselves. Further details can be specified in the national transposition laws.

Moreover, the employee side should try to find out more about the concrete aims of the company in setting up the SE (see pp. 18-19). These motives do not necessarily have to be the same as announced in official statements. Sometimes even a mismatch between the 'story' told to the shareholders and the one presented to the employees can be observed. It is therefore important that the employee side tries at the beginning of the negotiating process to find out the management's main reasons for establishing an SE. The company's motivation can also have a considerable impact on the context and the spirit in which negotiations take place.

'The founding situation of an SE can be a valuable information resource. A lot of facts about interest representation in other countries become available because of the company's duty to provide such information, for example if an interest representation exists in a particular location or not. This can be very beneficial for establishing new contacts with colleagues from other countries, getting in touch with them and building up networks and trust.'

Verifying information and data relating to employee involvement

As far as possible, the company's data on the employees in the various countries should be crosschecked and the employee side should carry out its own calculations on the composition of the SNB. It should subsequently be monitored whether the relevant figures change significantly (for example, through mergers of companies concerned). Also, the information on existing (and potential future) participation rights should be verified.

The figures are particularly important when calculating:

- the geographical allocation of seats in the SNB;
- the voting majorities in the SNB;
- the thresholds for participation.

For the purpose of the SNB not only employees of the companies directly participating in the setting up of an SE are counted. Also the employees of concerned subsidiaries or establishments (which are proposed to become a subsidiary or establishment of the SE upon its formation, but keep their national legal form) have to be taken into consideration. The SE legislation does not define any more precisely who is considered to be an employee – this definition (for example, part-time workers) is left to the national legislation.

Establishing cross-border contacts with colleagues

Contacts with employee representatives and their trade unions in all countries who will participate in negotiations should be established as soon as possible. Structures already in existence such as a European Works Council can be a valuable resource in preparing for negotiations. For this reason, an existing European Works Council should not be disbanded until the SE Works Council has been set up. Sectoral European trade union organisations can also play an important coordinating role in establishing cross-border contacts between employee representatives (see list on pp. 104-106).

Knowing the relevant provisions of national transposition laws

The member states had leeway on many points when transposing the SE Directive. By 8 October 2004, each country had to have adopted special implementing legislation which settled these points (although some member states implemented it with a considerable delay). In terms of establishing an SE, this means that in some matters the SE legislation of the country where the company is to have its registered office is applicable (for example, on the regulations for financing the SNB). Other matters, however, are governed by the various national SE legislations of all the countries concerned (for example, selection procedures for national representatives to the SNB).

Examples of issues regulated in the implementing legislation of the country where the SE will have its registered office:

- Financing of SNB: Which costs must be born by the company? Limitation to payment of costs of a single expert?
- Confidentiality rules.
- Misuse and structural changes after the SE has been established.
- Standard Rules: SE Works Council budget.

Examples of issues regulated in the implementing legislation of the different countries involved:

- Nomination of national representatives to the SNB (including whether each national representative will represent the same number of employees on the SNB).
- Possibility of nominating national or European trade union representatives as SNB members, even if they are not employees of the company.
- Protection for the national employee representatives in the SNB.
- Standard rules: Appointment procedures of national representatives to SE-WC.
- Standard rules: Regulations on the allocation of seats on the supervisory board/administrative board to representatives from that country.

The national transposition laws are available on the website of the EU Commission. For most languages an (unofficial) translation into English is available: <http://bit.ly/eu9Bdz>

The ETUI offers on its website a comparison tool which allows tailor-made comparisons on key aspects of the SE transposition laws: <http://compareSE.worker-participation.eu>

Ensuring the rights of national trade unions and representative bodies

The rights of national trade unions should be respected throughout the procedure. This applies in particular to the right to delegate representatives of the trade union to the SNB and the SE board. Whether such rights exist is a question of the national implementing legislation. It is highly recommended to inform the trade union(s) represented in the company of the start of the SE founding and of the negotiation progress.

The same reasoning applies to the relationship with and the respect for the rights of the existing national representative bodies. Experiences with SE and EWC negotiations have made it clear that mutual trust can be built by reporting and justifying regularly. This trust might be invaluable in case of possible misunderstandings or difficult decisions.

Selecting the national representatives of the SNB

The number of representatives from each country depends on the percentage of the total future SE workforce from that country (see p. 25). Each member state is entitled to at least one SNB member (for an example calculation, see p. 49). The national representatives are selected in different ways, depending on the respective national SE implementing legislation. It is therefore important to be aware of the selection rules in each of the countries concerned (see pp. 52-53). This is also necessary in order to check later that the SNB members are authorized to speak on behalf of employees from their country and, for example, have not simply been sent to the meeting by the local management.

Employee representatives and trade unions in each country should take the necessary steps to organise the nomination/election of the SNB representatives from their country. If there are no local representatives, this task could be taken up by national trade union organisations or also European trade union federations. If an EWC already exists in the company, this body can play a monitoring and coordinating role. In any case, it is advisable not to rely only on the company management to take the necessary steps. Some member states specify a deadline by which the national representatives must have been elected or appointed (for example, 10 weeks in Germany). In any case, the employee side cannot prevent negotiations by not setting up an SNB or delaying it.

'If your SNB is fairly large it might be useful to establish a smaller core negotiating team, which receives a mandate from the SNB to negotiate directly with the management. It is very important, however, that the core group and the SNB communicate frequently about the status and results of the negotiation process. The final agreement must of course be voted on by the whole SNB.'

Training future SNB members

The training of future SNB members contributes to the smooth running of the negotiations and should, in its own interest, be financed by the company. The minimum should be to provide access to suitable information material. If possible, the SNB members can also be prepared to fulfil their task in specific courses. Training should include:

- Impact of the SE founding for the employee side
- Negotiation procedures and involvement rights under SE legislation (including national transposition measures)
- National systems of employee representation in the countries concerned
- Negotiating skills
- Familiarization with cooperation in an intercultural context.

For practical reasons (travelling, time...) it might be an option to organise such training for all SNB members immediately prior to the first SNB meeting.

Organising preparatory meetings: Trust and strategy building within the SNB

In order to be able to achieve a satisfactory outcome in the negotiations, it is of the utmost importance that the employee side speaks with a single voice. This cannot be taken for granted, however, and is likely to require an internal, well prepared discussion. If the search for common ground and joint demands only starts in the negotiations with the employer side this can cause serious trouble.

The SNB members should therefore meet beforehand. The aim of such meetings is to have a common understanding of the implications of the SE founding and an internal discussion on common demands for the negotiations. Besides that, it would be advisable to let an expert give a presentation about key points of the (negotiating) process.

Ideally, the process of internal bargaining among the employee representatives should be (as far as possible) completed on key points before the negotiations officially begin, in order to be able to act as one when dealing with the management side and prevent a situation in which one country is played off against another.

The SNB should agree on joint demands (employee involvement rights, procedures, resources) which they want to form the basis of negotiations with management and also a joint strategy. Leeway for negotiation and compromise seeking should be discussed internally beforehand as well: Which issues/rights are crucial? Which are less important? What is the minimum we want to achieve?

Especially representatives from countries with relatively few employees can easily develop the feeling that their opinions/interests do not really matter and that the important decisions are being taken somewhere else. The SNB should therefore take its time to openly discuss and treat concerns, worries and diverging priorities seriously. There is large scope for misunderstandings and problems related to different cultural backgrounds, language problems or divergent worker representation systems. Although this work on joint demands might sometimes be tough it already represents

an investment in future collaboration in the SE Works Council. Indeed, the negotiation phase is essential for the process of mutual trust-building and the development of a functioning communication structure. Many representatives reported that the close teamwork and the intensive negotiations created a strong bond between colleagues from the different countries involved.

External (trade union) experts might support the group if such situations occur and help in balancing the different legitimate interests, demands and expectations. This requires the acceptance of this person by the group as a ‘neutral mediator’, however. A representative from a European trade union federation can be a suitable choice as s/he might in particular be aware of the different customs and practices in the countries concerned.

The costs of such preparatory meetings should be born by the company. This is also in their own interest, in order to ensure smooth and efficient negotiations.

‘When you come together in an SNB no one knows the exact personal backgrounds of all members (probably also later in the SE Works Council as well). What is important is that people have been properly nominated by their workforce. Whether someone has a trade union background or not, what counts is that you jointly work together and achieve the best for the workers.’

Taking up and not terminating the negotiations with management

The SNB should always take up negotiations and not terminate them. Company management may, for instance, try to convince employee representatives that the SE founding has little to do with them or that it would be better for both sides if the existing European Works Council simply continues its work. Also sometimes, EWC members might – for different reasons – be tempted to simply continue with the existing EWC and not negotiate on a new SE-WC.

First of all, the SNB is the only competent body which is authorised to take decisions with regard to employee involvement in the SE. An existing EWC is not allowed to take over the role of the SNB. In any case, the SNB has to be set up (even if it subsequently decides not to start negotiations).

Secondly, for companies where no negotiations have taken place, only national involvement rights and the EWC Directive can be applied. This means that the employees will not have (board-level) participation rights. Moreover, the EWC legislation will be applied only as long as the company falls under the scope of the EWC Directive (for example, has at least 1,000 employees in at least two different member states). The SNB can always demand the application of the standard rules as a minimum, which should be used as a ‘last resort’.

Thirdly, if the SNB decides not to start or to abort negotiations, it can be reconvened at the earliest two years after this decision (unless both parties want to start negotiations earlier). However, during these ‘catch up’ negotiations, the minimum rights set by the

standard rules are no longer guaranteed. The negotiating position of the employee side, consequently, is significantly worse.

Making effective use of time and resisting possible pressure

It is important to use the time available effectively to ensure the best possible agreement on employee involvement in the SE. A good preparation and communication flow on the employee side will pay off here.

Management might try to put pressure on the employee side to speed up negotiations and quickly sign an agreement (formulated by its lawyers). Often management has a fixed date in mind when they want to have finished the change of their legal form. The employee side should try to resist this pressure. Already the six-month deadline might in practice turn out to be rather short. This is all the more true if next to information and consultation (SE Works Council) also an arrangement on participation has to be negotiated. A timeframe of six months certainly is not exaggerated for reaching an agreement which is a solid base for a functioning European representation system.

'The short period might also turn out to be an advantage: If the company wants to finalise the negotiations quickly (because it already went public with its SE plans) this could also increase its readiness to find a proper compromise with the employee side.'

Practice has proven how important good quality interpreting is for the process of negotiating an SE agreement. The SNB should ensure that during negotiations with management but also during its internal meetings a professional interpreter is available. Due to the very technical nature of the topic it might be advisable to choose an interpreting team which already has experience in SE negotiations.

Following a joint strategy during the negotiations

In practice, SNB members might have very different ideas on how to conduct the negotiations, which can be rooted in different cultural backgrounds: Whereas in some countries it may be rather common *to bang one's fist on the table* or threaten to leave the meeting room if you want to add authority to your demands, this may be considered inappropriate in others. In some countries you would start by 'asking for everything' in the beginning (and subsequently negotiate downwards); in others you limit yourself to what is realistic. Moreover, SNB members from some countries might have more interest in maintaining good relations with the management and not provoking their employer too much. It is important to respect the different traditions and approaches of the people involved in the SNB.

There is no clear answer to the question of which approach is the best and most promising. Every SNB has to develop its own strategy which fits the company and specific circumstances. However, what is important is to agree on a joint approach

among worker representatives on how to lead the negotiations and what to ask for. This also requires explaining to colleagues from other countries why a certain issue is so important for oneself. Otherwise, the risk of mutual misunderstandings and frustrations is high.

'Keep in touch with your colleagues! Throughout the negotiations it is important to maintain good contacts with your colleagues in the SNB, in the national representation structures and at the workplace. Because in the end as a negotiator you will have to explain the agreement to your colleagues.'

Calculating majorities for decision-making

Decision-making procedures in the SNB depend on the way in which the SE is established and the nature of the decisions to be taken. As a general rule, most decisions are taken by a double absolute majority (absolute majority of SNB members representing at the same time the absolute majority of employees concerned). Some important decisions such as the decision not to open negotiations or a reduction in participation rights require a two-thirds supermajority (for details see p. 56-57).

'Although in exceptional cases you may have to break through an internal deadlock, in general try to avoid deciding by votes, but try to find a broad consensus instead. All SNB members should be convinced about the proposals that the SNB puts forward.'

How to deal with confidentiality

Members of the SNB (and later on, the SE-WC members) and the experts who support them are subject to secrecy obligations with regard to third parties (see SE Directive, Art. 8). However, this only applies to information which constitutes a trade or business secret on the basis of **objective criteria** and which has been **explicitly designated** as confidential.

This secrecy obligation cannot exist:

- within a body (that is, between individual members of the SNB/SE-WC)
- with regard to other employee representatives who are, for example, to be informed about the content and outcomes of an information and consultation procedure; in this case, confidential information must be passed on as confidential. Employee representatives of the SE, its subsidiaries and establishments are also subject to secrecy obligations;
- with regard to employee representatives on the supervisory or management bodies; they are (like all members of the supervisory or administrative board) already subject to specific secrecy obligations under the company law rules of the SE Regulation (Art. 49);
- with regard to interpreters and experts brought in for assistance. These people are also already subject to a secrecy obligation.

It is important to check the specific rules on confidentiality applying in the different member states concerned. In some countries these rules and their interpretation might be stricter (or looser) than in others. It is important to be conscious about different understandings regarding this topic.

Where appropriate, the necessary clarifications with regard to secrecy obligations should be anchored in the agreement (see p. 45).

The SE organs (or the companies involved in establishing the SE) are not allowed to transmit information if its disclosure would, for example, be prejudicial to the company. In order to prevent abuse of these rights by company management, the member states were obliged to introduce procedures by which the employee representatives can check whether the SE bodies can refuse access to information or demand confidentiality in a given case (however, obviously not all member states have implemented this requirement).

Getting started!

Once the negotiations are finished and the agreement on worker involvement has been signed, the company can proceed with the registration of the SE. However, for the employee side work has only just begun. The members of the SE-WC need to be nominated or elected in accordance with the provisions of the agreement and/or national rules (see pp. 53-54). The same goes (where applicable) for the future employee board-level representatives on the SE's administrative or supervisory board (see pp. 54-55). Prior to their nomination, the SE-WC could ask the future board members to sign a confirmation to respect the ETUC rules concerning the (partial) transfer of the remuneration to the European Worker Participation Fund (see pp. 98-100).

It will probably be management which invites the employee representatives in the different member states to the first meeting. In any case the employee side should follow-up and be involved in this process to avoid long delays and have a constituting meeting of the SE-WC as soon as possible.

This first meeting of the SE-WC puts an end to the founding phase of the SE's new system of employee representation at European level. This initial meeting should be used among other things to:

- elect the chairman and deputies
- elect the members of the select committee to carry out the 'day-to-day business'
- lay down further internal rules of proceeding (which are not regulated in the agreement but are considered important for the good functioning of the SE-WC)
- cross-check whether the members of the SE-WC have been selected properly.

It is usually advisable to discuss again the content of the agreement (and also how negotiations with management went). All members of the SE-WC should have a joint understanding of the agreement and the rights that go with it.

Moreover, the first meeting of the SE-WC should be used to get to know each other and learn about the different national cultures and traditions of employee representation in the SE-WC.

The SE-WC should also decide (or at least start to reflect upon) a work programme. What are the priorities for our work? What do we want to achieve in the short run, in the next years and also over the whole term of office? Where are the important challenges and uncertainties with regard to our working together and how can we overcome them (for example, by developing different alternative scenarios)? How

can we ensure continuity of our work between our full meetings? How do we want to communicate internally?

Two important issues in this respect are the link with the board-level representation and the reporting back to the national levels of interest representation in the different member states. The SE-WC is an additional layer and has to find its place within the overall system of interest representation in order not to become a 'disconnected' body. Equally, it must be ensured that a strong link and information flow exists between the SE-WC (and/or the select committee) and the employee board-level representatives. In this sense, it is advisable to invite the employee board representatives to the meetings of the SE-WC.

Especially for the initial meeting it could be helpful to ask for the support of a (trade union) expert, who already has experience in this start up phase of SE-WCs and/or EWCs. This expert could also help to find out what knowledge is not yet available among the SE-WC members and where training would be useful. Also for the board-level employee representatives further training is important not least because of the high responsibility they bear as a member of the highest company organ. This is all the more true for representatives from other member states with different representation systems, 'business cultures' and legal systems who have become a member of an administrative or supervisory board in another country.

What makes an innovative and substantive agreement?

The SE Directive gives the negotiating partners a large degree of autonomy. As regards the content of the agreement, Art. 4 of the SE Directive simply states that it should specify:

- the scope of the agreement
- the composition, number of members and allocation of seats on the SE-WC
- the functions and the procedure for the information and consultation of the representative body (SE-WC)
- the frequency of meetings of the SE-WC
- the financial and material resources to be allocated to the SE-WC.

In case the parties decide to establish arrangements for participation, the substance should be specified, including

- the number of members in the SE's administrative or supervisory board which the employees will be entitled to elect, appoint, recommend or oppose
- the procedures concerning how these members may be elected, appointed, recommended or opposed by the employees
- their rights.

Moreover the agreement should indicate

- the date of entry into force of the agreement and its duration
- cases where the agreement should be renegotiated and the procedure.

Against this, the SNB should feel encouraged to make concrete and creative proposals which fit the employees' specific needs. This is the very idea behind the SE approach:

Enabling the company actors to develop a tailor-made solution. Indeed, practice shows a great variety of employee involvement arrangements in SEs.

Ultimately, an agreement represents the outcome of an open negotiation process and a result that, hopefully, both sides can live with. Reaching such an agreement can involve accepting compromises and making package deals. One might accept abandoning a certain demand if one gets something else in return. This of course requires that the SNB has clarified internally what is most important to the group and which points are less crucial.

Preparing a draft agreement by the SNB could indeed create an advantage. It is in fact more difficult for the management side to dismiss a complete proposal for an agreement than separate demands. Moreover, experience has shown that close contact and a good relationship with European and national trade unions contributes to a good quality agreement.

If SNB and management sign an agreement the standard rules are not applied (unless the agreement itself makes a reference to applying the standard rules). This means that there is a risk that the employee side may accidentally accept a lowering of the legal minimum as granted by the standard rules. The least the employee side can ask for is the application of these rights (but only if the SNB did not terminate the negotiations!). For this reason, it is important to know the rights provided by the standard rules to avoid such a situation. The rights contained in the standard rules can be used as a reference point for negotiating demands (see overview on standard rules on pp. 58-62).

As a general rule, the agreement should not fall below the legal minimum as defined by the standard rules. The employee side should rather use their leeway to negotiate additional features which go beyond these minimum standards.

By nature, the aim of negotiations should therefore always be to achieve a maximum degree of involvement rights, in terms of information, consultation and participation. Because involvement rights will subsequently apply to all employees of the SE, the members of the SNB carry responsibility not only for the employees in their own country but ultimately for all the SE's employees. Partly this responsibility goes even further as all agreements set standards and reference points for negotiations in other SEs.

But what makes a substantive agreement from an employee and/or trade union point of view? Whereas the answer to this question is certainly difficult to generalise (and also the result of political discussions⁴) some suggestions will be made in this chapter.

Each SE is unique, and so will be its agreement on employee involvement. Of course an agreement does not have to limit itself to the points mentioned below. The recommendations provided here are intended to support employee representatives to negotiate an agreement which is substantive in their view. In the 'Helpful documents' (pp. 63-66) a checklist of key points for the design of SE agreements is provided offering

4 At the European level, the European Metal Workers' Federation (EMF) has probably gone furthest in this respect. After intensive internal discussions, the EMF already in March 2003 adopted concrete guidelines for SE negotiators in the EMF sectors (available at <http://www.worker-participation.eu/European-Company/Resources>).

further suggestions in this respect. Moreover, when preparing the negotiations it would be interesting to read and analyse some good practice agreements concluded in other companies.

Information and consultation

Competencies of the SE-WC

According to Part 2 of the Annex of the SE Directive the SE's workforce should be properly informed and consulted on questions which concern 'the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State'. Thus, this includes decisions taken in another member state than that in which they are employed. Regular reports have to be made available related to the progress of the business and its prospects (see Annex, part 2.b).

Transnational issues

The competence of the SE-WC should be consistent with the new definition used in the recast EWC Directive from 2009 (2009/38/EC). The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. In this respect, matters which concern the entire undertaking or group or at least two member states are automatically considered to be transnational (and therefore the SE-WC would have a right to be informed and consulted).

What is important is that these 'include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States' (see recital 16 of the recast EWC Directive).

For example, the intention of a company to close a plant in one country and to shift the production later on to another country should be considered a transnational issue (on which the SE-WC needs to be informed and consulted before the decision is taken). It should be left to the central management to demonstrate that a decision is a purely local issue.

Representation of countries

The SE agreement should ensure adequate representation of the different countries in which the SE has employees. In any case, there should be a procedure for involving countries not represented with a 'personal seat' in the SE-WC. If reasonable, the agreement could also include employees in EU accession countries and other non-EU countries, such as Switzerland.

'If headcount is used as the trigger point for the election of some SE-WC reps, to avoid yearly changes for those close to the trigger point, try to include a buffer. For example, a body is entitled to an SE-WC rep at 2500 employees, but the seat would not be lost until it drops to 2250 (10 per cent buffer).'

Substantive list of topics

The agreement should include an extensive list of topics on which the SE-WC is to be informed/consulted (topics as defined in the standard rules, plus further issues such as equal opportunities, health and safety, environment, training and qualification and so on). It can also include issues on which the SE-WC possesses an initiative right (to make proposals, for example, in the field of health and safety, data protection, CSR, equal opportunities, sustainability...).

Information and consultation procedure

The SE-WC should be informed/consulted at least at the same time as the national levels of interest representation. The information and consultation should take place at such time, in such fashion and with such content that the SE-WC's opinion is taken into account by management in the decision-making process. This also means that information material is provided in a timely way, is appropriate and comprehensive enough to allow SE-WC representatives to prepare themselves intensively. Moreover, the consultation should be done in a way which allows the exchange of opinions more than once, especially in the case of dissent.

Continuity of work

SE-WCs should preferably have at least two full meetings per year. This contributes to the continuity of work and is beneficial for both the employee and the company side. Practice shows that many SE agreements foresee indeed two regular full meetings.

Select committee

To ensure continuity of work, it is usually advisable that the SE-WC elects a select committee from among its members to carry out the day-to-day business between the full meetings (especially if the SE-WC consists of many representatives and/or only meets rarely in plenary). Its competencies should be clearly defined in the agreement and access to resources ensured (including the necessary time-off, see below under 'Resources'). The select committee should be composed of representatives from several countries/regions. It should have the possibility for at least two more meetings between the full SE-WC meetings. In case of exceptional circumstances or decisions the select committee should be informed, furthermore it should have the right to meet with the appropriate level of management.

Extra meetings

The SE-WC needs to have the right to call for extra meetings with management in exceptional circumstances. A further meeting should take place in case the competent SE body does not want to follow the opinion expressed by the SE-WC (see standard rules, part 2 (c)).

Internal meetings

The employee representatives must have the right to meet internally before and after the meetings with management. (This is all the more important if the SE-WC is composed of employees as well as management representatives). Interpreters must also be available for these internal meetings.

Resources

The agreement must ensure that the SE-WC and its members are equipped with the

necessary resources to fulfil their tasks. These include especially: Sufficient time-off for the SE-WC members for their work related to the SE-WC, access to office space and communication technologies, personal support (administrative support, experts, interpreting and translation services for documents and meetings) and costs for travelling. To ensure equal treatment and good communication within the SE-WC it is helpful not to restrict the number of working languages of the SE-WC too much. The agreement should also specify that the costs related to the select committee of the SE-WC (for example, travelling, interpreting) be borne as well.

'Consider trying to include some form of childcare (or dependant adult care) provisions within the agreement: this should help increase the diversity of the SE-WC members.'

Communication with national representatives and employees

The SE-WC must have the right to inform representatives in the different member states (or in the absence of representatives, the workforce as a whole). This means that the SE-WC is allowed to share the content of the information and consultation procedure with national/local representatives. The communication methods should be defined as well (for example, via post, e-mail, notice boards or pages on the company internet/intranet) and the costs of dissemination have to be covered. Employees who carry out work in countries outside the EU could also be considered for inclusion.

Training

The members of the SE-WC must have the right to paid training/qualification measures of their choice, including foreign language training.

Experts and guests

The SE-WC should have the right to be assisted by experts of its choice (paid by the SE) and to invite (permanent) observers and guests to its meetings, including representatives from national and European trade union organisations.

Confidentiality

The agreement should not lay down confidentiality rules which go beyond what is legally required (depends on the country in which the SE is registered). As a general rule, confidentiality for the members of the SE-WC should cover only information (a) constituting on the basis of objective criteria a trade or business secret, (b) which has been explicitly designated as confidential and (c) which comes to their knowledge as a result of their membership of the SE-WC. Management should be required to justify its demand for confidentiality. Employee representatives should be allowed to negotiate the scope (who is included in the group of people and/or organisations with which the information can be shared, for example, experts, trade union officials) and the timeframe (how long will the information remain confidential).

Participation

Employee participation in supervisory or administrative boards constitutes an important part of company industrial relations in many European countries (see pp.

69-85). The differences across Europe mean that participation will vary greatly among future SEs. The European Company offers an opportunity to redefine participation in a company specific and European context. The employee board level representatives gain access to important information and influence where strategic decisions for the entire company are taken or monitored. This is particularly important in multinational companies such as SEs, in order to be able to influence company management's decisions in the interests of the employees. National rights may no longer be able to achieve this sufficiently.

As a general rule, the agreement should not impair or reduce existing national participation rights. Instead, the SNB should take the opportunity to extend such rights to the entire SE workforce. Even if the company is not obliged to introduce participation rights in the SE alongside the obligatory information and consultation rights (see pp. 61-62), the SNB can try to convince the management to grant such rights voluntarily. However, so far there has been no known case in which participation rights have been introduced for the first time when the SE was set up.

Important points for participation in the SE agreement are:

European composition

If the SE has employees in different member states, the board-level employee representatives (BLERs) should come from different countries as well. The agreement should lay down clear rules on how the seats are distributed and how the BLERs are appointed (including where applicable the role of the SE-WC).

Same rights and duties

The BLERs should have the same rights and duties as the shareholder representatives. It should also be ensured that the BLERs are represented on the sub-committees of the main board.

Remuneration and time-off

The BLERs should be released from work to fulfil their tasks (including preparation time for meetings). They must receive the same remuneration as the other board members.

Internal meetings

The BLERs should have the possibility to meet internally before and after the board meeting, with the use of interpreters. They should also have the possibility to meet with the CEO/members of the management prior to the main board meeting (without the shareholder representatives being present).

Link SE-WC and BLERs

The agreement should ensure a strong link between the SE-WC and the BLERs (for example, by providing the BLERs with the right to participate in SE-WC meetings).

Further points (where applicable)

If possible, the employee side should be involved in the selection of the chairmanship, for example, by nominating a candidate for the vice-chairman of the supervisory board. The agreement should safeguard the presence of external trade union representative(s)

on the board, if such reserved seats previously existed. In the case of a growing workforce, the representation rights should be adapted along the lines of the (future) participation rights applicable for national companies in that country ('no freezing of the status quo forever' by a clause in the agreement).

General issues

Adjustment/ renegotiation

The agreement should lay down the term of office of the SE-WC members and have a clear procedure for its adjustment in case of changes in the company structure and/or employee figures (for example, the distribution of seats). Moreover, it should be specified under what circumstances the agreement shall be renegotiated, in particular defining what is considered to be a structural change triggering new negotiations. In any case, the continuity of the existing body should be ensured until a new agreement has been signed.

'Consider having the term of office for SE-WC reps and for board-level representatives the same, for example, both either four years or five years.'

Visits to plants

The SE-WC members and the BLERs should have the right to visit subsidiaries/plants of the company on their own initiative and to meet local employees and their representatives. Consider also plants outside EU territory.

Employment protection

The SE Directive lays down that members of the SE-WC and the BLERs shall enjoy protection and safeguards similar to those of the employee representatives under the legislation and/or practice of the member state in which they are employees. The SE Directive therefore does not provide a single standard, but refers employee representatives to their national rights. The SNB can try to go beyond this basic protection and ask, for example, all employee representatives to be 'lifted' to the same (higher) protection level, irrespective of country of origin. Another improvement would be that the SE-WC must be informed in advance in all cases where one of its members is to be dismissed.

'Dismissal protection varies widely across the EU and although we hope it is never needed, the agreement should aim for a minimum level for all members, so the highest level of protection that is present in one member state should apply to all SE-WC members, regardless of which country they are from.'

Conciliation rules

The agreement should specify the applicable national legislation (that defines the administrative and legal procedures for non-compliance with obligations from the

agreement). Moreover, it is advisable to set up a binding conciliation procedure in case of disputes on the application of the agreement. In some countries arbitration is possible from outside (the court or special arbitration committees)

Helpful documents and overviews

Example calculation: The SNB composition

The SNB represents the employees of the participating companies and concerned subsidiaries or establishments. The following example explains how the seats of the SNB are distributed among the workforce from the different countries involved (for details see SE Directive Art. 3(2)).

In this case, companies A and B plan to establish a joint SE holding company. Company A has 7,001 employees, company B has 3,000 employees. Each country receives one seat per 10 per cent (or part thereof) of the total number of employees. Consequently, each country can send at least one representative to the SNB. In this case, the SNB will consist of 13 members.

Table 1

| Country | Employees in Company A | Employees in Company B | Number of employees per country | Proportion of employees per country | Number of seats on the SNB |
|----------|------------------------|------------------------|---------------------------------|-------------------------------------|----------------------------|
| Italy | 4300 | 1500 | 5800 | 58 % | 6 |
| Hungary | 1200 | 900 | 2100 | 21 % | 3 |
| France | 1440 | 550 | 1990 | 19.9 % | 2 |
| Slovenia | 60 | 50 | 110 | 1.1 % | 1 |
| Belgium | 1 | 0 | 1 | 0,0 % | 1 |
| Total | 7001 | 3000 | 10 001 | 100 % | 13 |

The election or appointment of the SNB members is carried out according to the relevant national implementing legislation: for example, the issue of how the Italian representatives are elected or appointed will be decided by the Italian SE legislation. The national rules shall ensure that, as far as possible, every participating company shall have at least one member in the SNB. However the overall number of SNB members may not be increased by this.

Special case: SE created by way of a merger

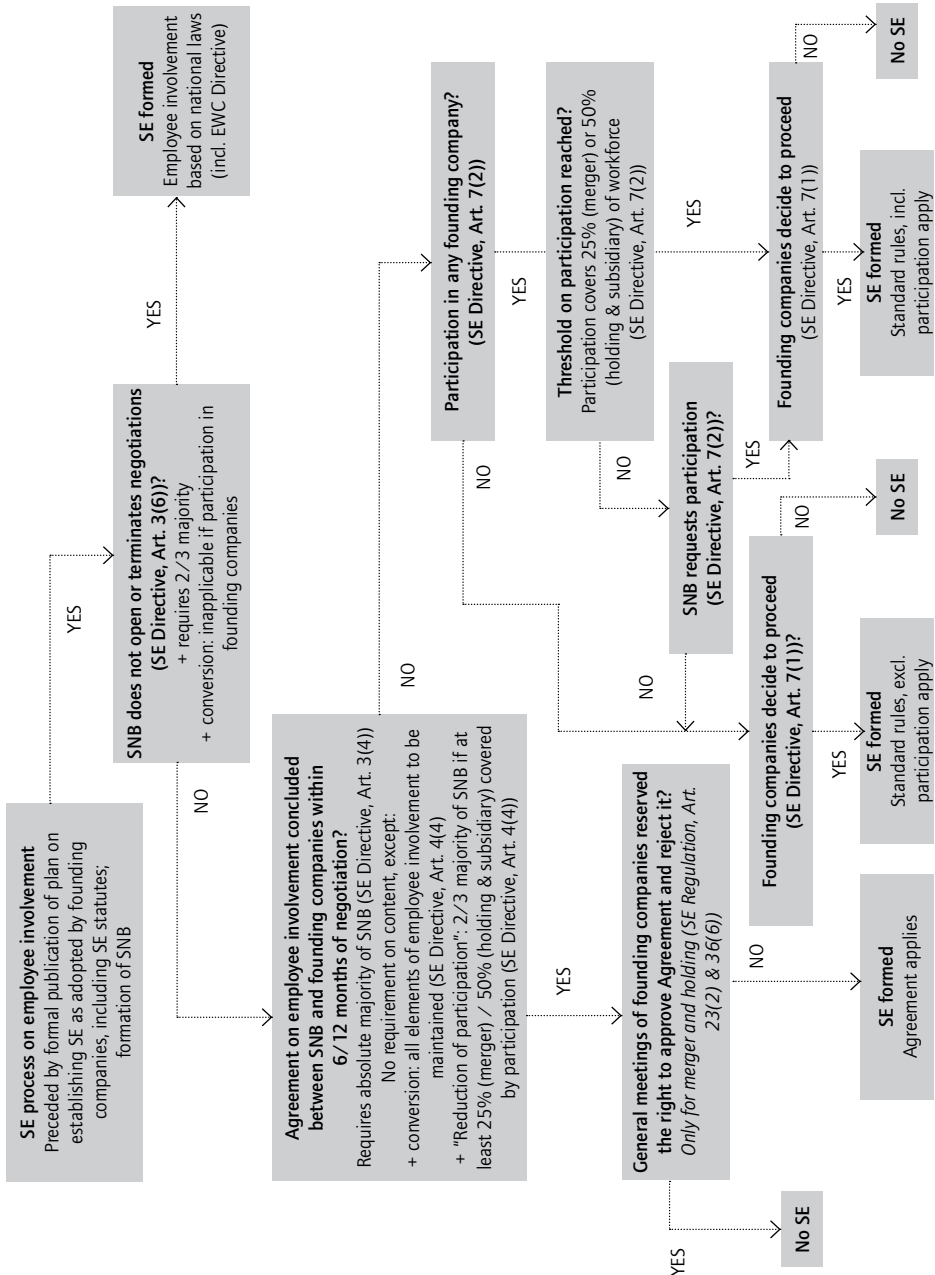
The rules on the distribution of seats are the same for an SE established by way of a holding, subsidiary or conversion. However, if an SE is established by way of a merger, special rules for the composition of the SNB apply. These rules provide for the possibility of additional seats to ensure that all companies which will cease to exist as a separate legal entity after the registration of the SE are represented on the SNB. The number of additional seats is, however, not allowed to exceed the maximum limit of 20 per cent of the original total number of members. In the example below, Greece will receive an additional seat so that an employee representative from each of the two participating companies which have employees in Greece (companies D and E) are represented in the SNB.

Table 2

| Country | Employees | Proportion of employees per country | Seats |
|---------|-----------------------------------|-------------------------------------|--------|
| Germany | 6,800 Company A | 68% | 7 |
| Sweden | 1,500 Company B and 800 Company C | 23% | 3 |
| Greece | 700 Company D and 200 Company E | 9% | 1 + 1 |
| Total | 10,000 | 100% | 11 + 1 |

Flowchart on the SE negotiation procedure

Figure 14



Comparison: Selection of national employee representatives

The SE Directive delegated the mechanisms for selecting national representatives to the SNB to the member states, which had to lay down these rules in their national SE transposition law. The same is true for the selection of the national SE-WC members and the employee representatives on the SE's supervisory or administrative board, in case the standard rules are applied.

Consequently, these mechanisms differ from one country to another. Largely, they reflect the prevailing national arrangements for representing employees at the workplace.

Selection procedures for national SNB members

Table 3

| | |
|----------------|---|
| Austria | Chosen by the works council structure. |
| Belgium | Chosen initially by the employee members of the works council and if this does not exist by a range of other bodies. However, as works council employee members can only be nominated by the unions, in practice the unions have the central role. |
| Bulgaria | Elected at a general meeting of all employees. However, this general meeting can decide to transfer its rights to choose the SNB members to the unions or to other existing representatives. |
| Cyprus | Chosen by the existing union or through direct elections. |
| Czech Republic | Initially chosen by the unions, where these are present. Only if there is no union are they chosen either by the works council, where one exists, or by representatives specially elected by the employees. |
| Denmark | Elected by employee members of the cooperation committee, the Danish equivalent of the works council. |
| Estonia | Elected at a general meeting of all employees or, where there are several companies, by delegates elected at general meetings. |
| Finland | Chosen by means of 'agreement or elections'. |
| France | Chosen by the unions from among the works council or union representatives in proportion to the level of support they received in the most recent works council elections of employee representatives. Only if there are no unions are the French members of the SNB directly elected. |
| Germany | Initially chosen by a meeting of works council representatives. Only if there are no works councils are the SNB members directly elected by the employees. The proportion of men and women elected should reflect the gender make up of the workforce and unions are guaranteed a third of the SNB members from Germany if there are more than three. |
| Greece | Chosen by the unions. Only if there is no union are they chosen by the works council, or if that does not exist, directly by the employees. |
| Hungary | Chosen by the works councils, with direct elections if there are no works councils. Unions have no role. |
| Ireland | Elected by the employees. |
| Iceland | Elected by union representatives. |
| Italy | Chosen by the trade union representative body at the company, in conjunction with the unions. If there is no representative body, the unions remain key in deciding how SNB members are chosen. |
| Latvia | Employees can decide to leave their representation in the SNB in the hands of their existing representatives – normally the union. However, they can also decide to elect them themselves. |
| Liechtenstein | SNB members will be chosen by the existing employee representation structures. Where such structures do not exist, they will be elected by the employees. |

| | |
|-----------------|---|
| Lithuania | In the first instance chosen by the existing employee representatives – either unions or, if there are no unions, works councils. Only if there are no employee representatives or they cannot agree, are the SNB members chosen by a general meeting of all the employees. |
| Luxembourg | Appointed by the employee delegations – the elected representatives of the employees. If there is no employee delegation SNB members are elected by the employees directly. |
| Malta | Elected directly by the employees. |
| Netherlands | Appointed by the works councils. |
| Norway | Chosen by the unions in the company, provided they represent at least two-thirds of the employees. |
| Poland | In the first instance, chosen by the unions, with direct election by the workforce only if there is no union presence. |
| Portugal | Chosen through agreement between the works councils, or by the works councils alone, if there are no unions, or through the unions, if they represent enough employees. There is a direct election by the workforce only if there is neither a works council nor unions with sufficient support, or the employees want one. |
| Romania | Appointed by 'existing employee representatives'. In the Romanian legislation these are defined as trade union representatives, unless there is no union, in which case employees have a right to elect individuals to represent their interests. |
| Slovak Republic | Chosen through agreement by the existing employee representative structures – both unions and works councils. Only if there are no existing representational structures is there a direct election. |
| Slovenia | Elected by all employees in a secret ballot. |
| Spain | Chosen by the unions that together have a majority on the works council. |
| Sweden | Chosen through agreement between unions that have collective agreements with the company. |
| United Kingdom | Elected by the employees, unless there is an existing consultative committee representing all employees. |

Allocation of SE Works Council seats

Usually the agreement regulates the selection and nomination of the SE-WC members. If, however, the standard rules are applied, the procedure is as follows (for details, see SE Directive, Annex – Part 1):

Distribution of seats between member states: Similar to the allocation of the SNB seats, the members of the SE-WC are elected or appointed in proportion to the number of employees employed in each member state. Each country receives one seat per 10 per cent (or fraction thereof) of the total number of employees (see example calculation for SNB on p. 49). Consequently, each country can send at least one representative to the SE-WC.

Election/nomination of national representatives: The election or appointment of the SE-WC members will be done in accordance with the national transposition laws. In most countries, the same arrangements as for SNB members apply:

Table 4

| | |
|----------|--|
| Austria | Same arrangements apply as for SNB members |
| Belgium | Same arrangements apply as for SNB members |
| Bulgaria | Same arrangements apply as for SNB members |
| Cyprus | Same arrangements apply as for SNB members |

| | |
|-----------------|---|
| Czech Republic | Chosen initially through the unions |
| Denmark | Same arrangements apply as for SNB members |
| Estonia | Same arrangements apply as for SNB members |
| Finland | Same arrangements apply as for SNB members |
| France | Same arrangements apply as for SNB members |
| Germany | Same arrangements apply as for SNB members |
| Greece | Same arrangements apply as for SNB members |
| Hungary | Same arrangements apply as for SNB members |
| Ireland | Overall chosen by employee representatives or, if there are none, by the employees themselves. The mechanism for doing so is decided on by the SNB. |
| Iceland | Same arrangements apply as for SNB members |
| Italy | Chosen by the existing employee representatives or by the employees and the unions if there are none |
| Latvia | No specific rules |
| Liechtenstein | Same arrangements apply as for SNB members |
| Lithuania | Same arrangements apply as for SNB members |
| Luxembourg | Same arrangements apply as for SNB members |
| Malta | Decision is left to the SNB |
| Netherlands | Same arrangements apply as for SNB members |
| Norway | Same arrangements apply as for SNB members |
| Poland | Same arrangements apply as for SNB members |
| Portugal | Same arrangements apply as for SNB members |
| Romania | Same arrangements apply as for SNB members |
| Slovak Republic | Same arrangements apply as for SNB members |
| Slovenia | Same arrangements apply as for SNB members |
| Spain | Chosen by the unions which have a majority on the works council |
| Sweden | Same arrangements apply as for SNB members |
| United Kingdom | Decision is left to the SNB |

Allocation of board seats

The agreement usually also lays-down the procedure for the selection and nomination of the ‘employee seats’ in the administrative or supervisory board of the future SE. If however the standard rules are applied, the procedure is as follows:

According to the standard rules on participation, the SE-WC decides on the allocation of the seats. This allocation among the member states is carried-out according to the proportion of the SE’s employees in each member state. If the employees of one or more member states are not covered by this proportional criterion, the SE-WC “shall appoint a member from one of those Member States, in particular the Member State of the SE’s registered office where that is appropriate.” (SE Directive, Annex – Part II (b))

The ‘internal allocation’ of the seats a country is given within the administrative or supervisory body is again determined by the national transposition laws:

Table 5

| | |
|-----------------|--|
| Austria | Chosen through the national works council structures |
| Belgium | Chosen initially by the works council and then by other bodies, but in practice the unions have the key role |
| Bulgaria | Elected by the employees |
| Cyprus | Allocated by the representative body |
| Czech Republic | Elected by the employees, either directly or through delegates. |
| Denmark | Elected by all Danish employees. |
| Estonia | Same arrangements apply as for SNB members |
| Finland | Same arrangements apply as for SNB members |
| France | Decision is left to the SE representative body |
| Germany | Same arrangements apply as for SNB members |
| Greece | Same arrangements apply as for SNB members |
| Hungary | Decision is left to the SE representative body |
| Ireland | Chosen by the Irish representative body members from amongst themselves |
| Iceland | Elected by the employees |
| Italy | Decision is left to the SE representative body |
| Latvia | Either the representative body or all employees elect board members |
| Liechtenstein | Same arrangements apply as for SNB members |
| Lithuania | Same arrangements apply as for members of the SE representative body |
| Luxembourg | Chosen by the employee delegations – the elected employee representatives |
| Malta | Decision is left to the SE representative body |
| Netherlands | Same arrangements apply as for SNB members |
| Norway | Same arrangements apply as for SNB members |
| Poland | Elected by the employees |
| Portugal | Same arrangements apply as for SNB members |
| Romania | Elected by the employees |
| Slovak Republic | Elected by the employees |
| Slovenia | Chosen by the SE representative body |
| Spain | Same arrangements apply as for SNB and representative body members |
| Sweden | Same arrangements apply as for members of the SE representative body |
| United Kingdom | Decision is left to the SE representative body |

Source of tables: L. Fulton (2008) *Anchoring the European Company in National Law - Country Overviews*, prepared for worker-participation.eu, <http://comparese.worker-participation.eu>



Scan with your smartphone to compare national SE laws

Overview: Decision-making in the SNB

The SNB takes decisions by **double absolute majority**, as long as no other provisions have been laid down. This is achieved when the absolute majority of SNB members vote in favour of the decision (each member has one vote) and this majority also represents an absolute majority (that is, more than 50 per cent) of the employees concerned. A simple majority — that is, more yes votes than no votes of the present members — is not enough. Abstentions or the absence of members do not affect the number of votes necessary.

For some important decisions, a greater proportion of votes in favour is required. To achieve this supermajority (qualified majority), those voting in favour must (a) represent at least two-thirds of the SNB members, (b) represent two-thirds of employees and (c) come from at least two different member states.

Such a supermajority is needed for the following decisions:

– **Decision not to open negotiations or to terminate them.**

This decision always requires a supermajority. In the case of a company converting into an SE, this decision is *not allowed if participation rights exist in the company to be converted*.

– **Reductions in existing participation rights**

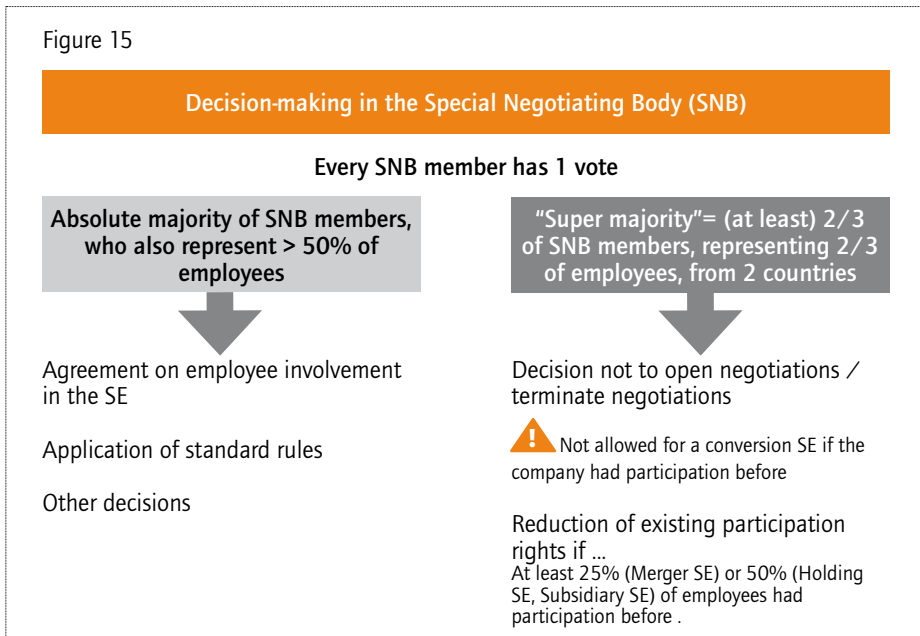
Here a supermajority is required if a certain proportion of the employees previously had participation rights (at least 25 per cent of employees when an SE is established through a merger, and at least 50 per cent in the case of SE holding companies and SE subsidiaries). Reduction implies here that a decision is to be taken to proportionally reduce influence over the composition of the SE's administrative or supervisory board (for example, only one-quarter of the seats instead of one-third).

It is not permitted to reduce existing participation rights in the case of a conversion into an SE.

All other SNB decisions are taken by double absolute majority. These include votes on the agreement with the management and on the voluntary application of the standard rules.

In order to calculate the voting proportions, it is also important to know whether members from the individual countries represent the same number of employees (this is a question of national implementing legislation). For example, do all representatives from country X represent the same number of employees (for example, each of them 5,000 workers) or do they represent different numbers (for example, representative A 2,000 workers, representative B 8,000 workers). This can be important if, for example, representatives from one country do not share the same opinion and for a decision the absolute majority of all employees is needed.

Figure 15



Overview: The standard rules (Annex SE Directive)

This section provides an overview of the rights contained in the annex of the standard rules of the SE Directive. Each member state had to lay down its own standard rules in accordance with the SE Directive. This means concretely for the SE that the legislation of the member state in which the future SE will be registered is applied (for example, for a Polish SE, it will be the standard rules contained in the Polish SE transposition law). This national law needs to be studied carefully by the SNB members.

The standard rules apply in two cases (SE Directive, Art. 7(1)):

- if both parties so agree, or
- if the parties fail to reach an agreement within the time specified (and the competent organ of the participating companies decides to accept the application of the standard rules and so to continue with the registration of the SE).

The standard rules will not be applied if the SNB decides not to start/to abort negotiations. For this reason the employee side should always take up negotiations and not terminate them. The least it can always ask for is the application of the standard rules.

SE Works Council (= representative body) – Parts 1 and 2

Composition

- Only employees of the SE and its subsidiaries and establishments can be members of the SE Works Council.
- Each country in which the SE employs people delegates one representative per 10 per cent (or part thereof) of the total number of employees in the future SE/SE group. Consequently every country concerned has at least one member on the SE-WC.
- The election/nomination of the national representatives on the SE-WC takes place through employee representatives or direct election, depending on national rules (for an overview see p. 52-53).
- The number of members and the allocation of seats is adjusted on the basis of any subsequent changes to the SE.
- Election of a select committee (from among the members of the SE-WC, maximum three members).
- Four years after being set up, the SE Works Council has to decide whether it wants to start negotiations on an agreement to replace these statutory arrangements or continue to apply the standard rules. In the first case, the SE-WC will conduct these negotiations.

Definition of competence of the SE-WC

‘The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.’

Definition of information and consultation

- Information ‘means the informing of the body representative of the employees and/or employees’ representatives by the competent organ of the SE [...] at a time, in a manner and with a content which allows the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE.’ (SE Directive, Art. 2(i))
- Consultation ‘means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees’ representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees’ representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE.’ (SE Directive, Art. 2(j))

Information and consultation rights of the SE-WC

- Regular reports from the competent SE organ on the progress of the business of the SE and its prospects.
- Right to be informed and consulted on the basis of these reports: meeting with the competent SE organ to be held at least once a year.
- Access to documents
 - Agendas of all meetings of the administrative board/management and supervisory board.
 - Copies of all documents submitted to the general meeting of shareholders.

Topics for information and consultation meeting (Annex SE Directive, part 2.b – list not exhaustive)

- Structure of the SE
- Economic and financial situation of the SE
- Probable development of the business and of production and sales
- Situation and probable trend of employment, investments and substantial changes concerning organisation
- Introduction of new working methods or production processes
- Transfers of production
- Mergers, cut-backs or closures of undertakings, establishments or significant parts thereof
- Collective redundancies.

Extra meetings in exceptional circumstances

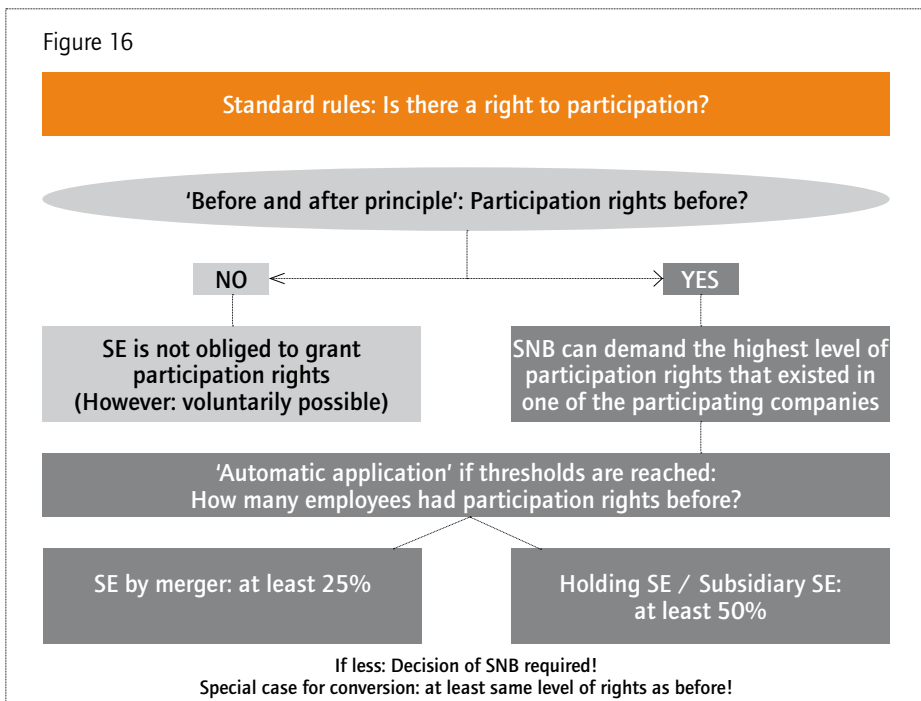
- Extraordinary information and consultation rights where there are exceptional circumstances affecting the employees’ interests to a considerable extent (in particular in the case of relocations, transfers, the closure of establishments or undertakings or collective redundancies).
- SE-WC can demand an additional meeting with the competent SE organ to be informed and consulted. The SE-WC can delegate this right to its select committee (for example, for reasons of urgency). Employee representatives from countries directly concerned shall have in any case the right to participate in these meetings.
- If the competent SE organ afterwards decides not to act in accordance with the opinion of the SE-WC, the SE-WC has the right to a further meeting with the competent SE organ to attempt to seek an agreement.

- The members of the SE-WC inform the employee representatives of the SE and its subsidiaries and establishments on the content and outcomes of the information and consultation procedures with the competent SE organ.

Other SE-WC rights

- **Chairing of meetings** can be regulated by national transposition law.
- Right to an **internal preparatory meeting** of the employee representatives prior to the meeting (that is, without representation of the competent SE organ).
- Entitlement to **time off for training without loss of wages**.
- The SE bears the **costs of the SE-WC**, that is, the necessary financial and material resources in particular for the organisation of meetings (including interpreting costs, accommodation and travel expenses for members of the SE-WC and the select committee).
- The SE-WC (and the select committee) can be supported by **experts of their choice**. Most member states have restricted the SE’s obligation to bear the cost of this to a single expert. The SE legislation of the country where the SE has its registered office is applicable (to check for a specific country visit <http://comparese.worker-participation.eu>). Experts can also be trade union representatives.

Figure 16



Participation rights – Part 3

As in the case of information and consultation rights, the standard rules provide minimum standards for participation rights which are (only) applied if the two parties do not reach an agreement or voluntarily decide to apply the standard rules.

However, the standard rules on participation are applied only if such rights existed previously in any of the participating companies. An SE is not obliged to grant participation rights if no such rights existed previously in any of the companies concerned (before and after principle). The SNB can nevertheless try to negotiate such rights (voluntarily) in an agreement.

Otherwise, the basic principle is: if the employees previously had participation rights, these can be extended to all the SE's employees. However, the rules vary between the concrete founding types. In the case of a conversion into an SE there is no leeway: all participation rights which applied in the company before must continue to be applied fully. For the other founding types (Holding SE, Merger SE, Subsidiary SE) the situation is more complex and depends on how many employees in the participating companies have been under one or more forms of participation. The standard rules can be applied in an SE established by merger if at least 25 per cent of the employees had such rights before. For an SE set up as a holding or an SE subsidiary this threshold is 50 per cent.

If fewer employees than this threshold previously had participation rights, the standard rules are not automatically applied. In this case the SNB can take a decision to apply the standard rules for participation anyway.

If more than one form of participation existed previously in the companies, the SNB has to select one of them. The number of board members to be delegated or recommended is based on the highest previous proportion among the companies concerned. The applicable figure is consequently not the absolute figure (for example, four out of 12 seats) but rather the percentage (one-third of the seats).

The employees have no influence over whether their representatives sit on a supervisory or an administrative board. The issue of the SE's structure (monistic or dualistic) is determined in the SE's statutes. This has no implications for the extent (for example, one-third of seats) of participation.

The SE Works Council decides on the allocation of the 'employee seats' in the administrative or supervisory board. The allocation between the member states is based on the proportion of employees employed in each country. If, however, the employees of one or more member states are not covered by this proportional criterion, the SE-WC shall appoint a member from one of those member states, in particular the member state of the SE's registered office (where that is appropriate). The member states decided in their transposition laws how their national representatives (for the seats to which they are entitled) shall be selected (for country details see pp. 54-55).

All employee representatives or members of the SE's administrative or supervisory board recommended by them have the same rights (including voting rights) and the same duties as the representatives of shareholders.

The SNB can agree to lower previously existing participation rights (a decision which is usually not recommended, however). Reduction means here that an agreement is made to proportionally reduce influence over the composition of the SE's management or supervisory board (for example, one-quarter of the seats instead of one-third). Here specific voting majorities must be observed (see pp. 56-57).

Checklist of key points for the design of SE agreements

The following list has been developed by Edgar Rose and Roland Köstler for the Hans Böckler Foundation⁵. It contains various aspects which should be taken into account in regulating and organising employee involvement in the SE. It is not intended as a fixed blueprint for direct application but rather as a list of proposals. That means that further considerations can of course be applied and the individual issues of the respective company need to be taken into account. The list has been prepared based on an evaluation of the agreements of 44 SEs based in Germany. The list therefore partly refers to the German transposition law (SEBG).

Goals/tasks (preamble)

Principles of the agreement (motives, value orientations)

- Intensification and internationalisation of worker involvement
- Cooperation based on trust
- Codes of conduct

Structure of worker representation

Formation of an SE-WC

Workers' representatives in the supervisory board

- (Board-level) participation based on parity
- One-third (board-level) participation
- Adaptation of workers' representation in the supervisory board to reflect a growing workforce

Scope

Countries included

- EU member states
- Non-EU countries: EEA, Switzerland, Turkey and so on

Companies included

- Complete list of all companies and locations covered by the agreement

5 Source: Edgar Rose and Roland Köstler (2011) *Mitbestimmung in der Europäischen Aktiengesellschaft (SE). Betriebs- und Vereinbarungen. Analyse und Handlungsempfehlungen*. Frankfurt am Main: Bund-Verlag.

SE Works Council (SE-WC)

Jurisdiction

- For transnational matters, including decisions in one country which can have effects in at least one other country
- For transnational matters which threaten to spill over into at least two other countries

Establishment (composition, elections, appointment)

- Distribution of mandates among the countries or companies concerned, involvement of locations without representation in the SE-WC, review clause with regard to changes in company structure or in the number of employees
- Eligibility, election procedures (central guidelines or election/appointment in accordance with national procedures)
- Term of office, loss of office

Structure

- Chair
- Select committee (size, composition, rights)
- Other committees, working groups

Meetings and taking of decisions

- Number of regular meetings per year
- Possibility of additional meetings
- Time and place of regular meetings
- Participation of management, meetings without management
- Further participants (trade union representatives, experts, representatives of affected locations, expert employees, representatives of locations outside the scope of the agreement)
- Taking of decisions by simple, double or qualified majority

Information and consultation

- Frequency of regular information and consultation
- Topics of regular information and consultation
- Documents to be made available in advance (scope, languages, date)
- Length of meetings, presence of top management, preparatory and follow-up meetings
- Reasons for information and consultation in extraordinary circumstances
- Timely information in extraordinary circumstances in the process of company decision-making (ensuring the possibility of exerting an influence), form of information
- Procedure of consultation in extraordinary circumstances (plenum or committee, if need be ensuring the inclusion of those not present), form of consultation (face to face, written)
- Serious dialogue with various positions on both sides, renewed consultation in the event of disagreement

Further involvement rights

- Initiative rights for international guidelines concerning social corporate culture (for example, protection against discrimination, training measures, employment protection)

Coordination, communication, confidentiality

- Coordination of information and consultation at different levels of employee representation (priority or simultaneity for the European level, coordination meetings, coordinating committee)
- National rights of employee representation to information and consultation are not affected
- Rights and possibilities of the SE-WC with regard to passing on and disseminating information, paths of communication between SE-WC and employees
- Secrecy and confidentiality (in accordance with §41 SEBG)

Resources and protection

- Bearing the costs (assumption of the relevant costs or budgeting)
- Exemption from work (within the framework of what is needed, number of hours, full exemption)
- Entitlement to premises, telephone, fax, PC with internet connection and personal e-mail account
- Personnel (office services, translation, technical support)
- Support from experts (selection and requirements, assumption of costs, right to participate in meetings)
- Number of languages for which interpreters will be provided, translation of documents, minutes of meetings, agendas, documents and so on
- Access to all premises
- Qualification and training entitlements (possible areas of training, periods of time, training for the whole committee or individuals)
- Protection of the SE-WC and its members (prohibition of discrimination and hindrance, role of the SE-WC in the dismissal of individual representatives)

Employee representatives in the supervisory board

Number, composition

- Parity or one-third participation
- Adaptation of extent of participation in the case of a growing workforce or structural changes
- International composition
- Trade union mandates

Appointment

- By the SE-WC or national representative bodies or multi-level (appointment by the SE-WC at the proposal of national bodies)

Rights and obligations

- Equal rights and obligations in the supervisory board
- Consideration/representation in committees
- Participation in the chair of the supervisory board (for example, election of a deputy chair)
- Appointment of a labour director
- Exemption from work, qualification and training entitlements
- Preparatory meetings on the employee side

- Prohibitions on discrimination and hindrance
- Secrecy and confidentiality (in accordance with §41 SEBG)

Final clauses

Term, continued validity of SE agreement

- (Minimum) term, cancellation terms
- Continued validity of the agreement after expiry or replacement by legal provisions (in accordance with §§22ff SEBG)

Revision, amendment of the SE agreement

- Amendment by mutual agreement
- Scheduled revision, consequences of disagreement
- Resumption in the case of structural changes, specific grounds, consequences of disagreement
- Authority of the SE-WC instead of a special negotiating body in the case of new negotiations

Dispute resolution

- Renewed consultation in the case of disagreement
- Internal or external arbitration or arbitration with a neutral chair, bindingness of arbitration decision

Comparative table: Industrial relations in the EU27+3

Table 6

| | Population | Union density rate | Dominant/principal level of collective bargaining | Collective bargaining coverage | Workplace representation | Board-level participation | Company board structure |
|----------------|------------|--------------------|---|--------------------------------|--|---|-----------------------------------|
| Austria | 8,375,000 | 28% | Industry | 98% | Works council | Yes: state-owned and private companies | Dualistic |
| Belgium | 10,840,000 | 52% | National (sets framework) | 96% | Union and works council (union dominates) | No | Monistic |
| Bulgaria | 7,564,000 | 20% | Company | 30% | Union | No | Monistic or dualistic |
| Cyprus | 803,000 | 55% | Industry and company | 52% | Union | No | Monistic |
| Czech Republic | 10,507,000 | 17% | Company | 43% | Union (or works council) | Yes: state-owned and private companies | Dualistic |
| Denmark | 5,535,000 | 67% | Industry – but much left to company negotiations | 80% | Union | Yes: state-owned and private companies | Monistic or dualistic |
| Estonia | 1,340,000 | 10% | Company | 33% | Union (or authorised workplace representatives) | No | Dualistic |
| Finland | 5,351,000 | 74% | Industry – but much left to company negotiations | 91% | Union | Yes: state-owned and private companies | Monistic or Dualistic |
| France | 64,716,000 | 8% | Industry and company | 98% | Union and works council | Yes: state-owned / privatised companies | Monistic or Dualistic |
| Germany | 81,802,000 | 19% | Industry | 62% | Works council | Yes: state-owned and private companies | Dualistic |
| Greece | 11,305,000 | 22% | Industry | 65% | Union (works councils) | Yes: state-owned companies | Monistic |
| Hungary | 10,014,000 | 17% | Company | 34% | Union and works council | Yes: state-owned and private companies | Dualistic or monistic (only PLCs) |
| Iceland | 318,452 | 88% | National and industry | 90% | Union | No | Monistic |
| Ireland | 4,468,000 | 34% | Company (after breakdown of national pact) | 44% | Union | Yes: state-owned companies | Monistic |
| Italy | 60,340,000 | 35% | Industry | 80% | Union | No | Monistic or Dualistic |
| Latvia | 2,248,000 | 14% | Company | 34% | Union (and authorised workplace representatives) | No | Dualistic |
| Liechtenstein | 35,000 | 4% | Industry and company | approx. 50% | Union | Yes: state-owned companies | Monistic |
| Lithuania | 3,329,000 | 9% | Company | 15% | Union (or works council) | No | Monistic or Dualistic |
| Luxembourg | 502,000 | 46% | Industry and company (varies with sector) | 60% | Works council | Yes: state-owned and private companies | Monistic or dualistic |
| Malta | 413,000 | 48% | Company | 51% | Union | No | Monistic |

| | Population | Union density rate | Dominant/principal level of collective bargaining | Collective bargaining coverage | Workplace representation | Board-level participation | Company board structure |
|-----------------|------------|--------------------|--|--------------------------------|---------------------------------|--|--------------------------|
| Netherlands | 16,575,000 | 22% | Industry | 85% | Works council | Yes: state-owned and private companies | Dualistic (or monistic)* |
| Norway | 4,858,000 | 53% | National and industry | 70% | Union | Yes: state-owned and private companies | Monistic |
| Portugal | 10,638,000 | 20% | Industry | 90% | Union (and works councils) | Yes: state-owned companies (but: law is not implemented) | Monistic |
| Romania | 21,462,000 | 33% to 50% | Industry (following ending of national level bargaining in 2011) | Not known | Union | No | Monistic |
| Slovak Republic | 5,425,000 | 20% | Industry and company | 35% | Union and works council | Yes: state-owned and private companies | Dualistic |
| Slovenia | 2,047,000 | 30% to 40% | Industry | 30% | Union (or works council) | Yes: state-owned companies / privatised companies | Dualistic |
| Spain | 45,989,000 | 16% | Industry | 71% | Works council (and trade union) | Yes: state-owned companies | Monistic |
| Sweden | 9,341,000 | 71% | Industry – but much left to company negotiations | 90% | Union | Yes: state-owned companies / privatised companies | Dualistic |
| United Kingdom | 62,008,000 | 27% | Company | 33% | Union | No | Monistic |

* Dutch companies will be able to choose between the monistic and dualistic structure (law has passed, presumably in force as of 1 January or 1 July 2012)

Source: <http://www.worker-participation.eu/National-Industrial-Relations> (for details see the individual country reports) Iceland: European Commission (2008), Employee representatives in an enlarged Europe. Volume 1, pp. 275–287; updated by E. Blöndal (2011)



Scan with your smartphone for a map on industrial relations in Europe

Comparison: Industrial relations in the EU27+3

Austria

Trade unions

There is a single trade union confederation, the ÖGB, to which 28% of all employees belong. Not affiliated to a particular party, the ÖGB nevertheless has strong political ties through its system of political groupings.

Collective bargaining

Industry-level agreements dominate and as the employers are normally represented by the chambers of commerce, to which all employers are obliged to belong, the agreements cover almost all employees.

Workplace representation

Employee representation is through the works councils, which by law can be set up in all workplaces with at least five employees, although in reality they are rare in smaller workplaces. They have important information and consultation rights, which amount to an effective veto in a few areas.

Board-level representation

Employee representation at board level is widespread, with the works council choosing a third of the members of the supervisory board from its own ranks.

Belgium

Trade unions

Trade unions are divided between competing confederations, which have clear political traditions. The two largest, CSC/ACV and FGTB/ABVV, are linked to the Christian and socialist movements respectively, while the smaller CGSLB/ACLVB is linked to the liberals. Despite this, the unions are able to cooperate and more than half the workforce is unionised – with union membership growing.

Collective bargaining

A national agreement sets the key elements of pay and conditions every two years and this agreement itself is tightly constrained by legislation limiting pay increases to forecast pay costs in Belgium's neighbours. With automatic pay indexation linked to inflation, negotiators have only limited room for manoeuvre.

Workplace representation

Belgium has structures at workplace level representing both all employees and trade unionists, but with only trade unions able to nominate to the works council the key body is the union delegation. It is the union delegation which negotiates key issues with management, although the works council has extensive information and consultation rights, and although it is a joint body with an employee majority, it has decision-making powers in some areas.

Board-level representation

Employees are not represented at board level, except in a handful of publicly-owned companies.

Bulgaria

Trade unions

Around 20% of the employees are union members. There are two main union confederations. The larger of the two is KNSB, which emerged from the reformed official trade union movement of the communist period, while Podkrepa came out of the opposition movement. Despite this, they now work together reasonably well.

Collective bargaining

Between 30% and 35% of employees are covered by collective bargaining. Bargaining takes place at both industry and company level (municipal level for municipal employees) but company level bargaining has become more important.

Workplace representation

There is no universal structure for employee representation in the workplace. In many cases the local union is the key body, although the law also provides for the election of other representatives. Employees are also able to elect additional representatives for information and consultation, but they can also choose to pass these rights to the existing union organisation or existing employee representatives.

Board-level representation

There is no employee participation at board level, but under certain circumstances employee representatives can have a consultative role in shareholders' meetings.

Cyprus

Trade unions

Trade unions have a relatively high level of trade union organisation – 55% to 58% according to government statistics. There are two major trade union confederations, the PEO and the SEK, and a smaller one DEOK, as well as important autonomous unions representing public sector workers, bank employees and teachers.

Collective bargaining

There is both industry and company-level bargaining. In total more than half of all employees are covered by collective bargaining, although precise figures are not available.

Workplace representation

Workplace representation is through the unions. Arrangements at workplace level depend on the particular circumstances that apply in each workplace.

Board-level representation

Employees have no statutory right to be represented at board level, although there are union representatives on the boards of two banks.

Czech Republic

Trade unions

ČMKOS is the dominant union confederation, although there are others. Overall, around a sixth of all employees are union members.

Collective bargaining

The most important level of collective bargaining is company level, although in many companies there is no bargaining at all. Industry level agreements cover some industries and following legal changes in 2005 they can again be extended more widely.

Workplace representation

The local union grouping is still the main way employees are represented at the workplace. In addition, a works council, which has slightly fewer rights, can be set up. Rules which said that a works council had to be dissolved if a local union was established were declared to be unconstitutional in 2008. In practice, works councils are rare. In most cases there is either a union or nothing.

Board-level representation

Employees have a third of the seats on the supervisory board of medium and larger-sized public limited companies.

Denmark

Trade unions

Union density is high, at almost 70%, although it has fallen in recent years. Most union members are organised in unions associated with the three main confederations – LO, FTF and AC. These are organised on occupational and educational lines, although the boundaries between the three are not precise.

Collective bargaining

Bargaining at national level provides a framework for much of the industrial relations system. Pay and conditions are negotiated between unions or cartels of unions and the employers at industry level, but complementary negotiations at company level are becoming increasingly important. Overall, 80% of employees are covered by collective bargaining.

Workplace representation

Unions are central to workplace representation. Local union representatives take up employees' concerns with management and are often also members of the main information and consultation body – the cooperation committee.

Board-level representation

Employee representation at board level starts with companies with 35 employees and they have one-third of the seats.

Estonia

Trade unions

Union density is low at around 10%. It fell sharply in the 1990s, but it now seems more stable. Most union members are organised in two major confederations, one, EAKL, primarily manual, the other, TALO, primarily non-manual.

Collective bargaining

Around a third of employees are covered by collective bargaining and by far the most important level for collective bargaining is the company or organisation, with unions negotiating with individual employers. However, the minimum wage is set after negotiations between the union confederations and the employers at national level.

Workplace representation

Employee representation at the workplace is primarily through unions, or does not take place at all. However, legislation which came into effect in 2007 allows for the election of employee representatives both where there is a union and where there is not. If there is no union these representatives can be involved in collective bargaining.

Board-level representation

There is no legal provision for employee representatives to participate at board level.

Finland

Trade unions

Union density is high, with almost three-quarters of employees in unions. Individual unions, which have considerable autonomy, are organised in three confederations, broadly along occupational and educational lines. The three confederations are SAK, STTK and AKAVA.

Collective bargaining

Collective bargaining was predominantly centralised until recently with a national agreement setting

the framework for pay increases at lower levels. However, since the pay round in 2007, bargaining has shifted to industry level with increasing room for company level flexibility on top.

Workplace representation

Employee representation at the workplace is provided primarily by the local union bodies rather than through statutory structures. Legislation gives union representatives rights in companies and other organisations with 20 or more employees (the employment threshold was reduced from 30 in 2007).

Board-level representation

Workers in companies with more than 150 employees have the right to participate in management decisions. However, how this is done, whether in a monistic board, a supervisory board or at operating level, is left to local negotiations, with the company having the final word.

France

Trade unions

In membership terms the trade union movement is one of the weakest in Europe with only 8% of employees in unions. It is divided into a number of rival confederations, competing for membership. (The main confederations are the CGT, CFDT, FO, CFTC and CFE-CGC.) But despite low membership and apparent division trade unions have strong support in elections for employee representatives and are able to mobilise workers to great effect.

Collective bargaining

Collective bargaining takes place at national, industry and company level and at each level there are detailed rules about who can negotiate and the requirements for an agreement to be valid. Industry level agreements are the most important level for negotiation in terms of numbers covered, although in some cases the rates they set are below the national minimum wage.

Workplace representation

A complex system of employee representation at workplace level exists, through both the unions and structures directly elected by the whole of the workforce. Where trade unions are present, the key figure will be the trade union delegates nominated by each union.

Board-level representation

There are two ways in which employee representatives can be board members, either elected by all employees or as representatives of employees holding shares. In addition, works council representatives are also present at board meetings, although they are not board members, and only have the right to ask questions.

Germany

Trade unions

Only around a fifth of employees are union members, and union density has fallen sharply since the early 1990s, in part because of a sharp fall in manufacturing employment in Eastern Germany after unification. The vast majority of union members are in the main union confederation, the DGB, but within it individual unions, like IG Metall and Verdi, have considerable autonomy and influence.

Collective bargaining

Collective bargaining is still conducted primarily at industry level between individual trade unions and employers' organisations. However, the system is under pressure as employers leave or never join employers' organisations, and the agreements themselves provide for greater flexibility at company level.

Workplace representation

Works councils provide representation for employees at the workplace and they have substantial

powers – extending to an effective right of veto on some issues. Although not formally union bodies, union members normally play a key role within them.

Board-level representation

Employee representatives have a right to seats on the supervisory board of larger companies (in certain legal forms) – one-third in companies with 500 to 2,000 employees, half in companies with more than 2,000.

Greece

Trade unions

The average union density is about 22%, but the position is very different in the public and state-owned sector, where unions have high levels of membership, and the private sector, where unions are weak. There are only two major confederations, ADEDY covering the civil service, GSEE covering the rest – but union structures below this level are fragmented.

Collective bargaining

Collective bargaining takes place at national, industry and company level, and in the past the national agreement, normally negotiated every two years, provided a basis from which improvements could be negotiated. However, changes introduced following the 2010 crisis and the provision of IMF and EU financial support, have fundamentally changed the bargaining structure.

Workplace representation

The local ‘primary level’ unions are the most important form of employee representation. They have clear legal rights covering information, consultation and negotiation. The law also provides for a works council structure. But in reality, works councils are found only in a few companies, and where they exist, they work closely with the local union.

Board-level representation

Employee representatives at board level are found only in some state-owned companies.

Hungary

Trade unions

Union density is relatively low – about 17% – and with six competing confederations – MSZOSZ, ASZSZ, SZEF, ESZT, LIGA and MOSZ – trade unionism is fragmented. There is competition between unions both in industries and in individual companies, particularly in large state-owned companies.

Collective bargaining

Collective bargaining takes place primarily at company/organisational level, despite considerable efforts by both unions and the government to encourage industry level bargaining. Around one-third of employees are covered by collective bargaining of any sort.

Workplace representation

Workplace representation is provided by both local trade unions and elected works councils, with the balance between the two varying over time. Currently, unions have negotiating and some consultation rights. Works councils have information and consultation rights but in practice often find it difficult to influence company decisions.

Board-level representation

Employee representatives make up one-third of the members of the supervisory board in companies with more than 200 employees. But new legislation, passed in 2006, allows single tier boards for the first time, and here employee rights are much weaker.

Iceland⁶

Trade unions

Union density is high at around 88%. The largest union is ASÍ which covers workers in the private sector almost exclusively, but also parts of the public sector, and represents 65% of all union members. Seven national unions are directly affiliated to ASÍ and the two largest are Efling (unskilled labour) and VR (shop and office workers). Public sector employees are organised by three different federations: Workers of the State and Communities (BSRB); Academic Workers (BHM) and Teachers Union (KÍ).

Collective bargaining

Collective bargaining takes place at national and industry level. All employees are covered by collective agreements which are legally binding as the minimum right of the worker.

Workplace representation

Workplace representation is relatively new and is mostly based on EU Directives. Worker representation operates mainly via the trade union and its representatives are practically the sole representatives.

Board-level representation

There is no employee representation at board level.

Ireland

Trade unions

Just over a third – 34% – of employees are union members – a figure that is slightly higher than in the recent past because of a sharp fall in overall employment as a result of Ireland’s severe economic crisis. There is only one union confederation, the ICTU, but individual unions, in particular the largest, SIPTU, have considerable power and influence.

Collective bargaining

A series of National Partnership Agreements provided a non-binding framework for pay bargaining from 1987 to 2009. However, the most recent agreement, signed in 2008, was unable to withstand Ireland’s economic crisis, and the country has returned to company level bargaining in the private sector, while in the public sector the government has imposed pay cuts.

Workplace representation

There is no statutory system for permanent employee representation. Those who work in unionised workplaces – about half the total – have representation through the union. New procedures have been introduced as a result of the EU directive on information and consultation, but they may not make much difference.

Board-level representation

Employee representatives in Ireland’s monistic boards are found only in the state-owned sector, where they normally account for a third of the total. Privatisation has cut the number of companies covered and the process is continuing.

Italy

Trade unions

There are more trade unionists than in any other country in the EU. But with half the membership made up of pensioners, overall union density among employees is around a third. There are three

6 Cf. European Commission (2008), *Employee representatives in an enlarged Europe*. Vol. 1, pp. 275–287.

main union confederations – CGIL, CISL and UIL – whose divisions were initially based on political differences, although these have become less clear over time.

Collective bargaining

Collective bargaining in the private sector takes place primarily at two levels – industry level and company level. However, changes to the system, agreed by some union confederations – but not the largest – in January 2009, have altered the balance between the two and divided the unions.

Workplace representation

The main employee representative bodies – the RSUs – are essentially union bodies, even if they are largely elected by all employees. The unions nominate the candidates for the two-thirds of the members directly elected by the whole workforce, and have the right to choose the remaining third themselves.

Board-level representation

There is no employee board-level representation, other than in a handful of companies which have agreed to permit it.

Latvia

Trade unions

There is one trade union confederation, LBAS, and almost all unions belong to it. Union density is relatively low, at about 14%, and is much higher in the public than in the private sector.

Collective bargaining

Company or organisational level bargaining is the most important level of bargaining, with relatively few industry level agreements. Despite this, collective bargaining coverage is relatively high, at 34% of all employees, although there are no negotiations for large parts of the private sector.

Workplace representation

In practice, employee representation at the workplace is through unions, although it is theoretically possible to elect workplace representatives. However, with low levels of union membership, particularly in the private sector, most workplaces have no employee representation at all.

Board-level representation

There is no employee representation at board level

Liechtenstein

Trade unions

There is only one union organising in the private sector. This is the LANV and, although union density is very low at just 4%, it is recognised as representing the country's employees. A separate union, the PVL, organises in public administration.

Collective bargaining

Collective bargaining in the private sector takes place at industry level, with the union, the LANV, bargaining separately with two employers' associations, although the financial sector is not covered. Recent changes reduced the coverage of agreements, which previously set the terms and conditions of around 50% of employees. However, new legislation has helped to make up some of the ground lost.

Workplace representation

Employee representation at private sector workplaces is through a body elected by all employees – a works council structure. However, the legislation provides few details on the composition or working of this body, which should be set up in workplaces with at least 50 employees. Its tasks and rights are largely those set out in the EU legislation on information and consultation and are also not defined in detail.

Board-level representation

There is no employee representation at board level.

Lithuania

Trade unions

Union membership is low – about 9% of all employees. The unions are divided into three main confederations, LPSK, LDF and Solidarumas, divided – historically at least – on ideological grounds. However, the unions are now working together more closely.

Collective bargaining

There is virtually no collective bargaining other than at company or organisation level, and even here the extent of bargaining is limited. Since 2004 elected works councils have bargaining rights if there are no unions present, but there is no evidence so far that this has increased the coverage of bargaining.

Workplace representation

Legislation now provides for employees at workplace level to be represented either by trade unions or – if there is no union – by a works council. They have almost identical functions, including collective bargaining and information and consultation, and since 2005, works councils can also organise strikes. In practice, most workplaces have neither.

Board-level representation

There is no employee representation at board level.

Luxembourg

Trade unions

Union density is relatively high at 46% and is stable or even rising. There are two main union confederations, OGB-L and LCCB, which are both represented in the national tripartite structures. The two have ideological differences, although they cooperate fairly closely. There are also other important union groupings in the specific sectors of finance and the public service.

Collective bargaining

The key levels of bargaining are industry and company level, and the relative balance between the two varies from industry to industry. There are precise rules on what must be included in agreements and who can sign them. There is also pressure to reach a settlement without conflict.

Workplace representation

There are two main bodies representing employees at the workplace, one dealing with employees' day-to-day concerns and the other – in larger workplaces only – a joint employer/employee body intended to improve industrial relations in the workplace. Unions have important rights in this structure and the majority of employee representatives are union members.

Board-level representation

Companies with more than 1,000 employees or with a substantial state involvement, either through ownership or state aid, must have employee representatives at board level. They generally have a third of the seats.

Malta

Trade unions

Union density is relatively high, with 48% of employees belonging to unions. Two main union groupings, the GWU and UHM, face one another, both organising a wide spectrum of workers,

although some occupations, such as teachers, bank employees and midwives, are in independent unions. There are political differences between the two main groups and relations are often tense.

Collective bargaining

The key level for collective bargaining is the company level. There is also protection for those not covered by collective bargaining through a series of wage orders for specific industries that set minimum terms, and a system of partial pay indexation through ‘cost-of-living-adjustments’.

Workplace representation

It is the union – provided it is recognised (that is, the employer is willing to negotiate with it) – that normally represents the employees at workplace level. EU directives have led to new arrangements for non-unionised employees, but it does not seem that these have been taken up to any extent. In addition, they still give clear primacy to the union, as they disappear if a union is established.

Board-level representation

Employee representatives in companies at board level have now largely disappeared, and are now found only in companies belonging to the union or the Malta Labour Party.

Netherlands

Trade unions

Just over a fifth of employees (21%) are union members, and the proportion has been gradually falling in recent years. There are two main confederations, the FNV – the larger of the two – and the CNV, initially divided on ideological/confessional lines, although now with good relations. A third grouping, the MHP, represents more senior staff.

Collective bargaining

The vast majority of employees in the Netherlands are covered by collective bargaining, mostly at industry level. However, many large companies negotiate their own deals. Negotiators generally follow the recommendations agreed at national level and recent pay increases have been moderate.

Workplace representation

Employee representation at the workplace is essentially through works councils elected by all employees. They should be set up in all workplaces with at least 50 employees and more than three-quarters of workplaces of this size have them. (There are other arrangements for smaller workplaces.) Works councils are not directly union bodies, although union members often play a key role.

Board-level representation

Works councils have the right to nominate up to one-third of the members of supervisory boards in larger companies – above 100 employees, among other things. However, neither employees of the companies nor trade unionists dealing with them can be nominated, so the works council nominees are often distant from employees’ day-to-day concerns.

Norway

Trade unions

More than half Norway’s employees are in unions and although union density has declined slightly in recent years, union membership has increased. The majority of unions are grouped in four confederations, LO, UNIO, YS and Akademikerne. While UNIO and Akademikerne primarily organise more highly qualified employees, there is direct membership competition between LO and YS unions.

Collective bargaining

Agreements reached at national level provide much of the industrial relations framework that in other countries would be provided by legislation. Below this there is a hierarchical structure of annual

negotiations at both industry and company/organisation level which set terms and conditions for around 70% of the workforce.

Workplace representation

Union representatives provide the most important element of workplace representation and play the main role in information and consultation, employee representation and local negotiations. There are also works councils in larger unionised companies, but their role is primarily to make companies more competitive and efficient by encouraging workplace cooperation.

Board-level representation

The right to have a single employee representative at board level starts with companies with 30 employees. In companies with more than 50 workers, one-third of board members come from the employees.

Poland

Trade unions

Trade union density is relatively low at around 15% and membership is divided between a large number of organisations. There are two large confederations, NSZZ Solidarność and OPZZ, and one somewhat smaller one, FZZ. However, a significant number of union members are in small local unions not affiliated to any of the main confederations.

Collective bargaining

Only a minority of employees are covered by collective bargaining, which takes place largely at company or organisation level. This means that where there are no unions to take up the issue, pay and conditions are set unilaterally by employers – subject to the national minimum wage.

Workplace representation

Until recently unions provided the only legally constituted representation for employees at the workplace. However, legislation implementing the EU directive on information and consultation provides for the creation of works councils and large numbers have been set up. Initially, where unions were present, they could dominate the choice of works council members, but this arrangement was judged unconstitutional and new rules mean that works councils must be elected.

Board-level representation

Legislation provides for employee representatives at supervisory board level in state-owned and partially privatised enterprises, as well as even greater powers in some state-owned enterprises. However, there is no right to employee representatives on the boards of private companies.

Portugal

Trade unions

Lack of precise data makes it difficult to give figures of trade union membership and there is a large gap between the totals provided by the unions and the union density estimates of the government. There are two main trade union confederations, the CGTP-IN and the UGT, whose relationship was initially marked by conflict rather than cooperation, but has now improved. Trade union structures are complex with almost 350 autonomous individual unions.

Collective bargaining

Negotiations at industry level, between employers' associations and the unions, are the most important element in the collective bargaining arrangements. Company level agreements cover far fewer employers. The country has traditionally had a high level of collective bargaining coverage – partially through the extension of agreements by the government. However, this high level is under

threat as legal changes now make it easier for agreements to lapse.

Workplace representation

Although in theory there are two channels of workplace representation of employees for most issues – through the workplace union representatives and through an elected works council, in practice works councils are relatively rare. They normally exist only in large companies where unions are strong. The rights of both are limited to information and consultation, with no opportunity to block management decisions.

Board-level representation

The constitution refers to the rights of employees to elect representatives on the governing bodies of state-owned companies and other public bodies – rights that were never implemented. In addition, in 1999, legislation removed the right of employees to elect a member of the management board. There is no employee board-level representation in private companies.

Romania

Trade unions

Union density is relatively high with between a third and a half of all employees in unions, although the figures are very uncertain. The structures are fragmented, with five separate confederations – CNSLR-Frăția, BNS, CSDR, CNS Cartel Alfa and Meridian – each with a substantial number of affiliated federations.

Collective bargaining

The system has been fundamentally changed by legislation passed in 2011 and collective bargaining at national level, which previously set minimum pay and conditions for the whole economy, has been abolished. There are also new rules for bargaining at industry and company level, and, although it is too soon to see how they will operate in practice, the position of the unions is likely to be weakened.

Workplace representation

Employee representation at the workplace is through the unions, although legislation does provide for employee representatives to be elected if there are no union members. Workplace union structures potentially play a key role in collective bargaining but they also have significant consultation rights.

Board-level representation

Employee representatives have no right to be board members, although they can attend board meetings for some items.

Slovak Republic

Trade unions

Union density, at about 20%, is higher than in most of the other states of Central and Eastern Europe. There is a single dominant union confederation, KOZ SR, although individual unions have considerable autonomy and influence.

Collective bargaining

Collective bargaining takes place at both industry and company level and between 35% and 40% of employees are covered. The level of coverage has declined in recent years, and new legislative changes may lead to a further reduction. Company level agreements are important in setting effective wages, leading to substantial variations between companies.

Workplace representation

Recent years have produced major changes in legislation favouring works councils over workplace trade union organisations. Both can now exist in the same workplace and powers are divided between them.

After moves favouring trade unions in legislation passed in 2007, the 2011 Labour Code has introduced changes which make it more difficult for unions to be accepted as representative at the workplace.

Board-level representation

Employees have a right to a third of the seats on the supervisory board of companies in the private sector with more than 50 employees, provided some other conditions are met, and to half the seats in state-owned companies.

Slovenia

Trade unions

The proportion of employees in trade unions is relatively high, at between 30% and 40%. The union structure is fragmented, with seven separate union confederations, although one of them, ZSSS, is clearly dominant.

Collective bargaining

Hitherto, almost all employees have been covered by collective bargaining – a result of the past position where the employers' side included chambers of commerce and industry, to which all employers had to belong. However, new legislation has ended this arrangement and coverage may fall. Negotiations take place at industry and company level, and at national level in the public sector.

Workplace representation

Workplace-level representation is provided by both the union in the workplace and the works council. Both have information and consultation rights: the works council's are more extensive, but only the union can undertake collective bargaining.

Board-level representation

Employee representatives have between a third and a half of the seats on the supervisory board of Slovenian companies. Until 2006, most larger and medium-sized companies had to have such a supervisory board, but new legislation allows for a monistic board structure, where employees' representation is reduced to a maximum of a third of the seats on the board.

Spain

Trade unions

Union density is relatively low at around 16%, although the results of elections to works councils indicate that unions have much wider support. There are two dominant union confederations, CCOO and the UGT, although there are other important groupings at regional level and in the public sector.

Collective bargaining

Negotiations take place at national, industry and company level and since 2002, with the exception of 2009, an annual national agreement has provided a framework for lower-level bargaining. The overall level of coverage is high at around 70% of the total workforce.

Workplace representation

Elected works councils are the main channel of workplace representation for employees, although the law also gives a specific role to the unions at the workplace and in larger workplaces the trade union delegate may be the key figure. The works councils themselves are dominated by the unions and, besides information and consultation rights, they also bargain on pay and conditions at company level.

Board-level representation

There is no overall right to employee board-level representation. However, there are a small number of employees on the boards of some public and recently privatised companies and savings banks.

Sweden

Trade unions

The level of union membership is very high – at 71% – although it has fallen from its peak of 86% in 1995. There are three main union confederations, LO, TCO and SACO, which are divided along occupational and educational lines in line with the traditional way in which employees are grouped, and there is considerable cooperation between them.

Collective bargaining

The key level for collective bargaining is the industry level, although more than 90% of employees have part of their pay determined by local level negotiations, and 8% have all their pay determined locally. The overall level of coverage of collective agreements is high – estimated at 90%.

Workplace representation

Workplace representation for employees is through the local union at the workplace. There is no other channel. Legislation requires the employer to negotiate with the unions at the workplace before making major changes, and many of the practical arrangements for doing so, which elsewhere in Europe are fixed by law, are left to local negotiations.

Board-level representation

Employees are represented on the boards of all companies with more than 25 employees (Sweden has a monistic board system.) There are two or three employee members and they account for around one-third of board members in most companies. They are chosen by the union and are generally the key figures in a whole range of employer–union relations.

United Kingdom

Trade unions

At present, a little over a quarter (27%) of the employees are union members, although union density is much higher in the public sector (57%) than in the private sector (15%). There is only one union confederation, the TUC, and individual unions are fully independent. Around 60% of all trade unionists are in the three largest unions, which have grown through mergers.

Collective bargaining

Only a third (33%) of employees are covered by collective bargaining. In the private sector coverage is lower at just under a fifth and the key bargaining level is the company or the workplace. In the public sector, where two-thirds of employees are covered, industry level bargaining is more important.

Workplace representation

There is no common structure for employee representation and in many workplaces it does not exist. Unions are the most common way that employees are represented and they can now legally compel the employer to deal with them, but only if they have sufficient support. Most non-union workplaces have no employee representation, and the regulations implementing the EU directive on information and consultation have not changed this.

Board-level representation

Employees have no statutory right to representation at board level and, with a handful of exceptions, this has also been the case in practice.

Source: L. Fulton (2011) Worker representation in Europe. Labour Research Department and ETUI (online publication). <http://www.worker-participation.eu/National-Industrial-Relations>



Scan with your smartphone for more information on a specific country

Overview: Mapping board-level participation in Europe

In 18 of the EU27+3 countries (Iceland, Norway and Liechtenstein) there exists legislation on board-level participation. Even in countries that have no legal regulations, such as Italy and Belgium, instances may be found (albeit exceptional) of workers' representatives sitting on the company's board as the result of a collective agreement.

Depending on the company structure in the respective member state, the workers' representatives may either sit on the board of directors (in a monistic system with only an administrative board) or on the supervisory board (in a dualistic system with a management board and a supervisory board). In every country a specific system has evolved and (board-level) participation is always embedded in the wider context of the national industrial relations system. Consequently, the situation differs significantly among the member states.

In the twelve countries where board-level participation is widespread (see map) – that is, where it comprises state-owned companies as well as private companies – two different 'legal cultures' are found. In Germany and Austria, board-level participation is, for example, regulated by law, whereas in Sweden it is based on collective agreements (albeit backed up by a legal framework).

Six member states have only limited versions of board-level participation for state-owned or privatised companies. These are based on either laws or collective agreements.

Moreover, the form taken by board-level participation differs a great deal depending, once again, on the national industrial relations culture. In particular, these variations relate to:

- **Thresholds, that is, the number of employees above which there is a right to board-level participation**

These thresholds range from 25 employees in Sweden to 1000 in Luxembourg.

- **Proportion of employee representatives in the highest-level company boards**

These range from a single representative, through one-third (for example, in Denmark and Austria) to up to half of the members of the company board (in Slovenia and Germany). In Finland, this decision is part of the agreement made between employer and employees.

- **Election or nomination of employee representatives**

In the majority of countries, the employee representatives in the highest-level company bodies are selected by general election of the company's employees (for example, in Poland, Denmark and Ireland). In some countries, however, it is the trade unions that appoint and/or nominate candidates for all (for example, Sweden and Spain) or some (for example, Germany and Slovakia) of the representatives. In a third group of states, this right is held by the works councils (for example, Austria and Slovenia). A special case is the Netherlands where works councils have the right to nominate candidates for the supervisory

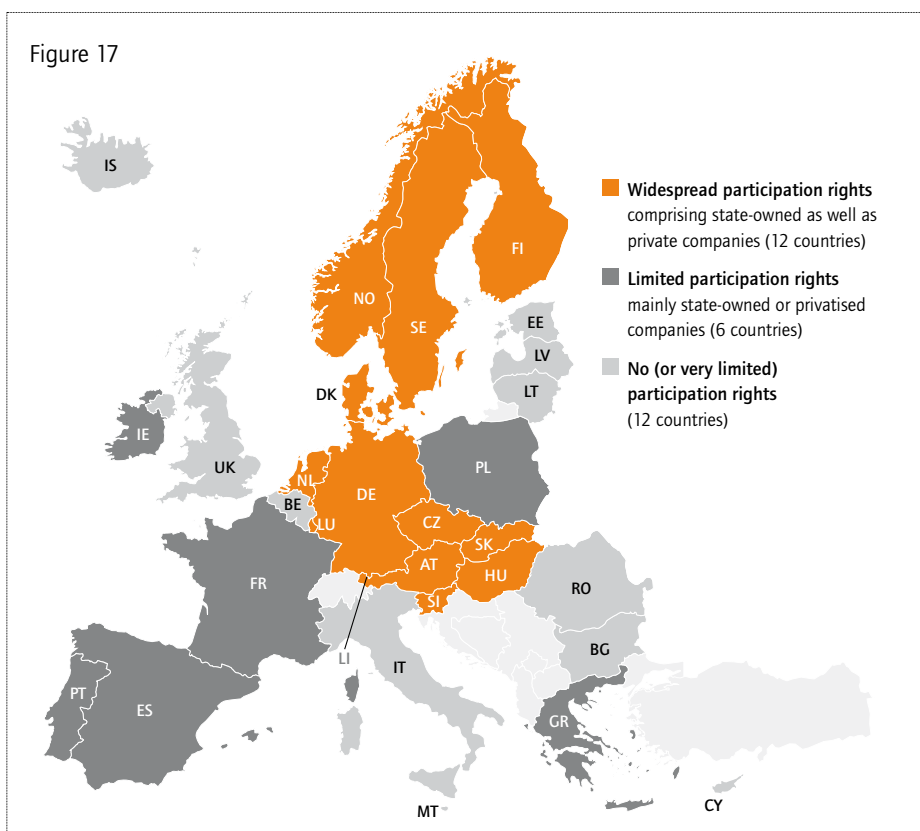
board. For one-third of the board members this right can be considered nearly as strong as the right to appoint.

– **Selection criteria for employee representatives**

In the majority of countries, employee representatives must be employed in the company. However, there are countries with other arrangements: in Germany, for example, some of the representatives are representatives from trade unions represented in the company. The Netherlands, again, is an exception: there neither employees of the companies nor trade union representatives dealing with the company can be nominated.

– **Rights of employee board-level representatives**

Generally speaking, members of the supervisory or administrative board selected by the employees have the same rights and duties as those selected by the shareholders in all countries. There are exceptions, for example in Sweden, where employee representatives cannot participate in decisions where the interests of their trade unions are affected (for example, in the case of collective agreements).



Comparative table: Board-level participation in the EU27+3

Table 7

| | Regulation in the | | Scope | Proportion/ Number of BLEReps | Nomination by | | Appoint- ment mechanism | Eligibility criteria | CG structure |
|----|-------------------|--------------------|-----------------------------------|--|--|-------------------------|---|--------------------------------------|-----------------|
| | Public sector | Private sector* | | | Trade union | WC | | | |
| AT | • | • | Ltd>300Plc | 1/3 | | • | By WC | Only WC members | D |
| BE | | | | | | | | | M |
| BG | | | | | | | | | M+D |
| CY | | | | | | | | | M |
| CZ | • | • | SOE Plc>50 | 1/3 up to 1/2 | Agreement between board/employer and TU/WC | | Vote | Employees (external TU in Plc) | D |
| DE | • | • | C.>500 | 1/3 up to 1/2 | | | vote | Employees and external TU | D |
| DK | • | • | Ltd and Plc>35 | 1/3 (min. 2-3 members) | No legal procedure | | Vote | Only employees | M+D |
| EE | | | | | | | | | D |
| ES | • | | Saving banks SOE>1000 | 1 to 3 members | | | By TU in SOE, by worker group of the general assembly in saving banks | No restrictions | M |
| FI | • | • | Ltd and Plc>150 | Based on agreement (max. 4) | Agreement between personnel groups | Vote if no agreement | Only employ- ees | M+D | M+D |
| FR | • | • | SOE Plc (former SOE) | Min. 2 members Max. 1/3 | • | | Vote | • | M+D |
| GR | • | | SOE | 1-2 members | De facto by TU fractions | | vote | Only employees | M |
| HU | • | • | Plc and Ltd>200 | D: 1/3 M: by agreement | Consulted | | By WC | Only employees | M+D |
| IE | • | | SOE | 1/3 (1 to 5 members in practice) | • | | Vote | Only employees | M |
| IS | | | | | | | | | M |
| IT | | | | | | | | | M+D |
| LI | | | | | | | | | M |
| LT | | | | | | | | | M+D |
| LU | • | • | • | Min. 3 mbrs, max. 1/3 | • TU seats in iron/steel C | • | Vote by employee representa- tives | • except for iron/steel C | M+D |
| LV | | | | | | | | | D |
| MT | | | | | | | | | M |
| NL | • | • | 'structuur' Plc and Ltd>100 | Max. 1/3 | | | By AGM | No employee, nor TU | (M)**+D |
| NO | • | • | Ltd and Plc>30 | Min. 1 member Max. 1/3 | | | Vote | Only employees | M |

| | Regulation in the | | Scope | Proportion/ Number of BLEReps | Nomination by | | Appoint- ment mechanism | Eligibility criteria | CG structure |
|----|-------------------|--------------------|----------------------|---|----------------------------------|----|-------------------------------|-------------------------|-----------------|
| | Public sector | Private sector* | | | Trade union | WC | | | |
| PL | | | SOE Privatised C. | Min. 2-4 members Max. $\frac{2}{5}$ | | | Vote | No restrictions | D |
| PT | • | | SOE | Defined by C's articles of association | By 100 or 20% of employees | | Vote | Only employee | M |
| RO | | | | | | | | | M+D |
| SE | • | • | Plc and Ltd>25 | 2 to 3 members | • | | Several options | Only employee | M |
| SI | • | • | D: Plc M: Plc>50 | D: $\frac{1}{3}$ to $\frac{1}{2}$ M: 1 to 3 members | | • | By the WC | Only WC members | M+D |
| SK | • | • | Plc>50 SOE | Min. $\frac{1}{3}$ Max. $\frac{1}{2}$ | • | | Vote | Only employees | D |
| UK | | | | | | | | | M |

Notes:

* including privatized companies as long as the legal provisions cover companies where the State holds less than 50% of the capital

** Dutch companies will be able to choose between the monistic and dualistic structure (law has passed, presumably in force as of 1 January or 1 July 2012).

C = company

TU = trade unions

WC = works council

CG = Corporate Governance

Ltd = private limited company

Plc = public limited company

SOE = state-owned enterprises as long as the State holds more than 50% of capital

AGM = annual general meeting of shareholders

M = monistic structure (a single board of directors)

D = dualistic structure (a management board and a supervisory board)

Table: N. Kluge and M. Stollt, updated by A. Conchon in 2011

SE facts and figures: Overview of current state of SE founding

Since the entry into force of the SE legislation, the ETUI has been monitoring developments and has made information on registered SEs available via its online European Company (SE) Database (<http://ecdb.worker-participation.eu>).⁷ Unfortunately, there is as yet no (European) central registry for SEs. Instead, SEs are registered at national level and the accessibility, completeness and quality of information vary significantly. According to Art. 14 of the SE Regulation, information on an SE's registration must be forwarded to the Official Journal of the EU. However, the data available are fairly limited and there is no information at all about employee involvement, for example. The ETUI is seeking to fill this important gap by its research on SEs. The main sources for the SE Factsheets are the national registries, the *Supplement to the Official Journal of the European Union* (TED) and further own research by the ETUI's SEEurope network.

SE categories (used by SEEurope network)

For its work on the SE, the SEEurope network has distinguished between different types of SE so as to better describe the diversity of SEs which quickly evolved after October 2004. The categorisation allows a distinction between SEs depending on whether the company has operations and employees (normal SE), operations but no employees (empty SE) or neither operations nor employees (shelf/shell SE). SEs which are probably operating but where not enough information for classification is available (for example, whether the SE has employees or not) are referred to as 'UFO SEs' (Unidentified Flying Objects).

Figure 18

| SE categories (as used by the SEEurope network) | | |
|---|--|-----------------------|
| Normal SE | A normal SE is an SE with operations and employees (more than 5 employees). | 189 |
| Empty SE | An empty SE is an SE with operations, but without employees. | 96 |
| Shelf SE | Shelf SEs have neither operations nor employees. | 126 |
| UFO SE | A UFO SE is probably operating but information for classification is lacking (e.g. on employees) + 'Micro SEs' (=≤ 5 employees, total: 78) | 498 (from CZ: 374) |
| | | Total 909 |

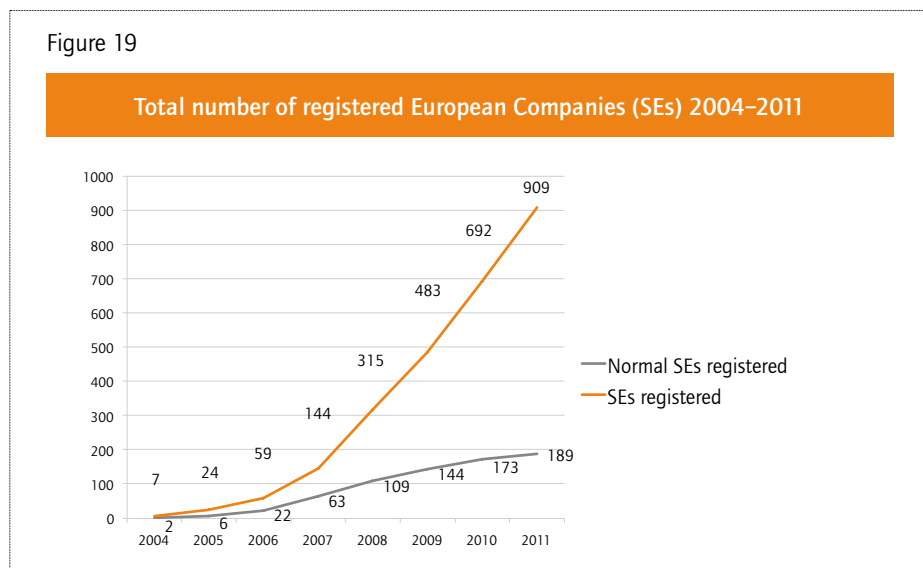
Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)

7 Information in the ECDB is compiled by the ETUI's 'ECDB team' under the coordination of Melinda Kelemen, Anders Carlson and Michael Stollt, with support from the SEEurope research network.

From an employee involvement perspective, the main focus of interest is the normal SE. However, collection of information on empty and shelf SEs is crucial if we are to be able to follow up whether they are subsequently ‘activated’ and/or acquire employees.

909 registered SEs...

Since the introduction of the European Company Statute in October 2004, the number of SEs has increased year by year. By 1 September 2011, the ETUI database listed a total of 909 active SEs. However, this rather impressive total should not blind observers to the fact that many SEs do not conform to the standard definition, for they are, in their overwhelming majority, SEs without employees (empty SEs) and/or even without a specific business purpose (shelf SEs). Roughly one-quarter of the total number of SEs are today identified as normal SEs in the sense that they have both business activities and employees.



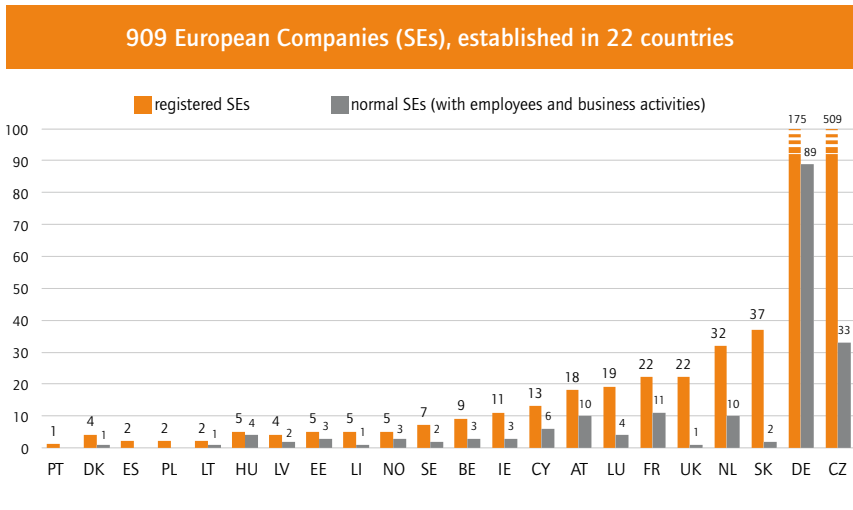
Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)

... established in 22 different countries

SEs can today be found in 22 countries of the EU27+3. Whereas Germany is home to almost half of the normal SEs, the Czech Republic has the ‘highest score’ with regard to the overall number of SEs.⁸ Unfortunately, little is known about the employee figures of the Czech SEs which means that a large proportion of them are classified in the database as UFO SEs. Besides these two countries, significant SE home countries are the UK, the Netherlands, France, Slovakia, Luxemburg, Austria and Cyprus.

8 For possible reasons why there are so many SEs in the Czech Republic see: Compton, C. (2009) Firms seek EU registration. *Societas Europaea* allows firms to move headquarters abroad. *Prague Post*, 26 August. Available at: <http://bit.ly/9oLrcu> (accessed on 24 August 2011).

Figure 20

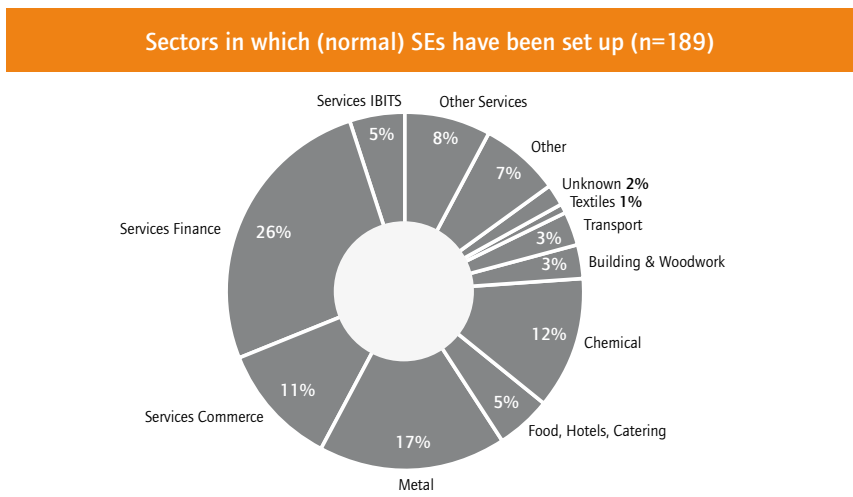


Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)

Sectors in which (normal) SEs have been set up

This figure indicates the business sectors in which normal SEs operate. The distinctions refer to the respective European trade union federation(s): 50% of the normal SEs are active in service sectors, mainly financial and commercial services, but a considerable number of SEs are also set up in the metal and the chemical sectors.

Figure 21



Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)

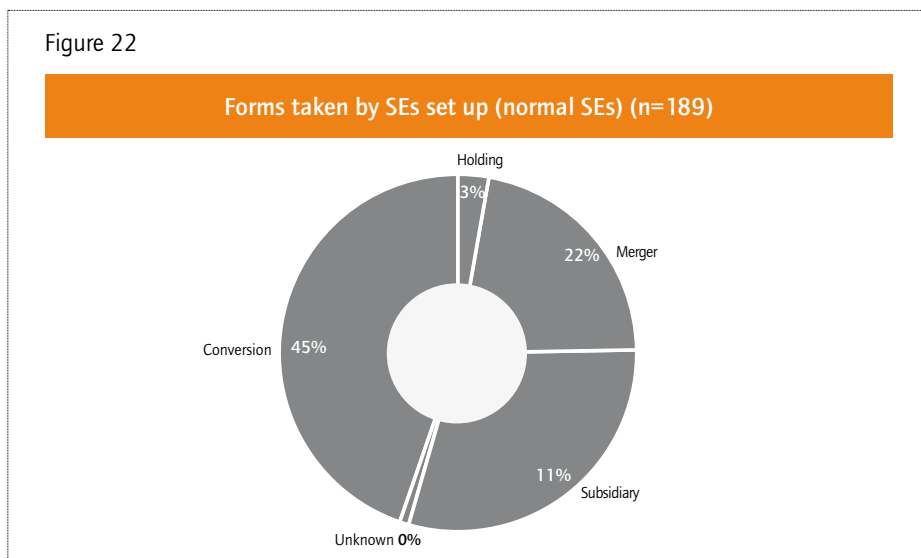
Forms of Foundation (normal SEs)

The SE Regulation describes four different ways of setting up an SE (Merger/Holding/Subsidiary/Conversion). Most of the normal SEs have been founded either by way of a merger between two (or more) companies or through the conversion of an existing public limited company.

However, a new de facto form of foundation has developed over time, namely the activated shelf SE.

An activated shelf SE is an SE which has changed from a shelf SE into (a) an ‘empty SE’ by commencing business activities (but still not having employees) or (b) into a normal SE by commencing business activities and transferring employees into the company. Particularly in Germany and the Czech Republic, a market for SE shelf companies has developed. Often a shelf SE serves as a vehicle to set up further shelf SEs (as subsidiaries) which are then sold to interested clients. The new owner subsequently activates the SE by transferring employees into it and/or by starting business activities.

Figure 22

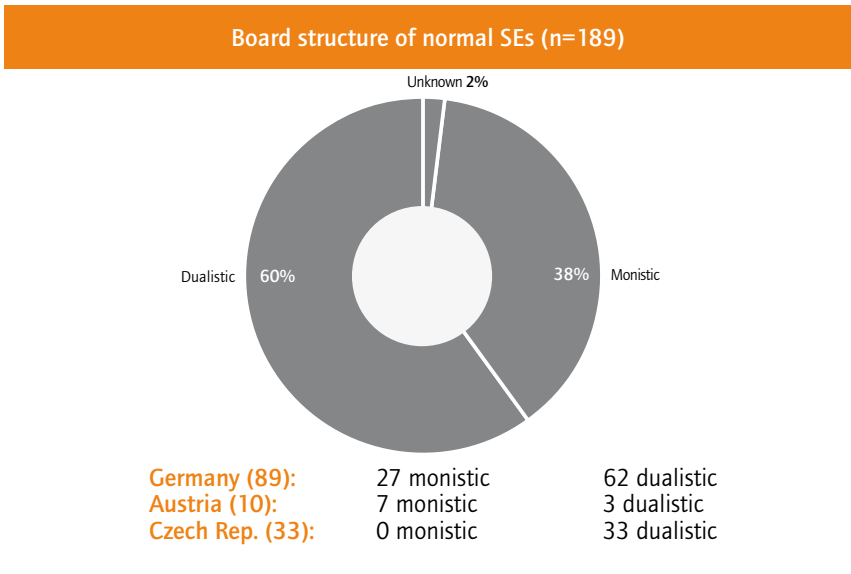


Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)

Board structure of normal SEs

The SE's general meeting of shareholders is free to decide on the board structure of the SE. It can choose between a monistic (single-tier) board or a dualistic (two-tier) board structure with a management board and a separate supervisory board. This indeed represents a key innovation introduced by the SE, since in many countries a certain board structure for national companies is prescribed by national company law (see p. 15). In practice the majority of normal SEs have kept their original board structure. However, especially in Germany, a considerable percentage of the normal SEs have opted for a monistic board, something hitherto unknown under the German system.

Figure 23

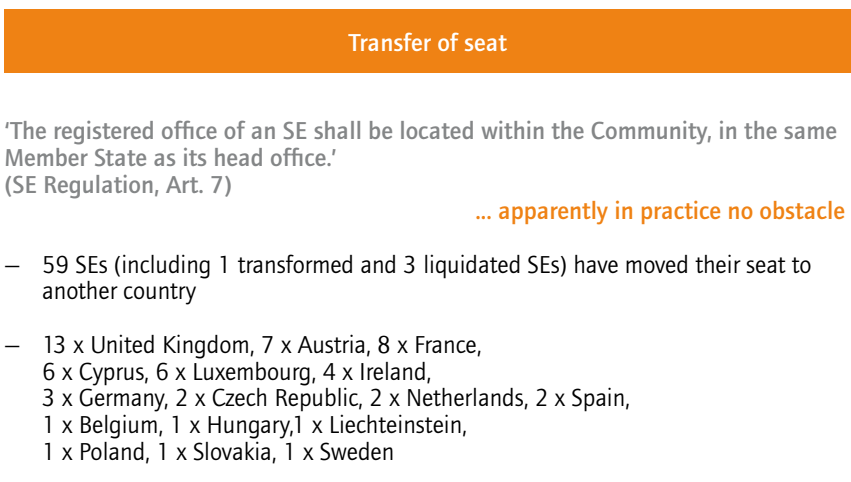


Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)

Transfer of seat

SEs have also started to use their specific flexibility with regard to cross-border mobility: 59 of them have already transferred their seat to another member state, sometimes immediately after their registration in the latter. Tax reasons and other forms of ‘regime-hopping’ might have been key motives for at least some of these SEs.

Figure 24



Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)

Worker involvement in normal SEs

Remarkably, by September 2011 only in 76 of the 189 normal SEs is an arrangement on worker involvement known to exist. This points to a clear lack of implementation of the SE legislation which foresees compulsory negotiations on employee involvement for all SEs.

Figure 25

Worker involvement in the normal SEs

At least **76 SEs** have arrangements on **information and consultation** at transnational level.

38 SEs have **board-level representation (participation)**, registered in:

- **Germany:** Allianz, Allianz Managed Operations & Services , BASF, Bilfinger-Berger, BP Europa, Clariant, Dekra, DVB Bank, E.on-Energy Trading, GfK, Knauf Interfer, Lenze, MAN Diesel & Turbo, MAN, Pfeiffer & May, Porsche Automobil Holding, PUMA , Q-Cells, Renolit, REpower Systems, RKW, SCA HygieneProducts, SGL Carbon, Surteco, Tesa, Wacker Neuson, Warena, WILO
- **Austria:** Bauholding STRABAG, Plansee
- **France:** Burgeap Igip Holding , Mutavie, SCOR (4 SEs)
- **Cyprus:** Prosafe
- **Hungary:** Wamsler

Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)

A further shortcoming concerns the notion of structural changes. Particularly relevant in this respect are the so-called ‘activated shelf SEs’ (see p. 89). By June 2011, for example, 21 of the 87 normal German SEs had been set up by activating a shelf SE. In terms of employee involvement, the contrast is striking: whereas basically all SEs set up by way of conversion have an arrangement on employee involvement, only three ‘activated shelf SEs’ are known to have information and consultation rights. This means that an increasing number of SEs with significant workforces have not yet held negotiations. Clearly, the previously dormant problem of shelf SEs has now awoken.

The agreements on employee involvement concluded in the larger SEs, in particular, are generally in line with good ‘EWC practice’ and, on certain points, go beyond the provisions of the SE Directive. In 38 SEs the rights enshrined in the agreement include (board-level) participation, thereby adding an important dimension for workers’ voice in company decision-making. Today, more than 110 employee board-level representatives represent the interests of the workforce on SE supervisory or administrative boards. A fundamental innovation introduced by the SE legislation is the transnational component of participation at board level. In a number of SEs employee representatives from several countries sit on the board: SE employee board-level representatives today come from 12 different countries (AU, BE, CZ, DK, FR, DE, HU, IT, NL, NO, PL, UK).

More information on registered SEs and the most recent facts and figures can be found in the ETUI’s online European Company (SE) Database, free registration at <http://ecdb.worker-participation.eu>

Overview: Registered normal SEs with worker involvement

The following list provides an overview of the identified registered normal SEs (that is, SEs with employees and business activities) where an arrangement on employee involvement exists.

Table 8

| Company | Sector of activity | Headquarter | Form of establishment | CG structure | Inf & Cons | Part | Date of registration |
|--|---------------------|----------------|-----------------------|--------------|------------|------|----------------------|
| Allianz Managed Operations & Services SE | Services IBITS | Germany | Subsidiary | Dualistic | Yes | Yes | 24/04/2008 |
| Allianz SE | Services Finance | Germany | Merger | Dualistic | Yes | Yes | 13/10/2006 |
| BASF SE | Chemicals | Germany | Conversion | Dualistic | Yes | Yes | 14/01/2008 |
| Bauholding Strabag SE | Building & Woodwork | Austria | Conversion | Dualistic | Yes | Yes | 12/10/2004 |
| Bilfinger Berger SE | Building & Woodwork | Germany | Conversion | Dualistic | Yes | Yes | 08/10/2010 |
| BP Europa SE | Chemicals | Germany | Conversion | Dualistic | Yes | Yes | 30/04/2010 |
| Burgeap Igip Holding SE | Other Services | France | Holding | Dualistic | Yes | Yes | 01/09/2009 |
| Chubb Insurance Company of Europe SE | Services Finance | United Kingdom | Merger | Monistic | Yes | No | 02/01/2009 |
| Clariant SE | Chemicals | Germany | Subsidiary | Dualistic | Yes | Yes | 15/10/2008 |
| Cloppenburg Automobil SE | Metal | Germany | Conversion | Dualistic | Yes | No | 15/04/2010 |
| Conrad Electronic SE | Services Commerce | Germany | Merger | Monistic | Yes | No | 18/08/2006 |
| Conrad Holding SE | Services Commerce | Germany | Merger | Monistic | Yes | No | 18/08/2006 |
| Curt Richter SE | Transport | Germany | Merger | Monistic | Yes | No | 25/03/2009 |
| Deichmann SE | Services Commerce | Germany | Conversion | Monistic | Yes | No | 22/12/2008 |
| Dekra SE | Other Services | Germany | Conversion | Dualistic | Yes | Yes | 13/07/2010 |
| Donata Holding SE | Chemicals | Germany | Subsidiary | Monistic | Yes | No | 30/01/2006 |
| DVB Bank SE | Services Finance | Germany | Merger | Dualistic | Yes | Yes | 01/10/2008 |
| E.ON Energy Trading SE | Other | Germany | Conversion | Dualistic | Yes | Yes | 29/05/2009 |
| Elcoteq SE | Metal | Luxembourg | Conversion | Monistic | Yes | No | 01/10/2005 |
| ElectronicPartner Handel SE | Services Commerce | Germany | Conversion | Monistic | Yes | No | 03/08/2009 |
| Elster Group SE | Metal | Germany | Conversion | Monistic | Yes | No | 09/10/2009 |
| EPEX Spot SE | Services Finance | France | Conversion | Monistic | Yes | No | 17/09/2008 |
| Equens SE | Services Finance | Netherlands | Merger | Monistic | Yes | No | 17/07/2008 |
| Gütermann Holding SE | Textile | Germany | Conversion | Dualistic | Yes | No | 13/08/2008 |
| Galleria di Brennero Brennerbasistunnel BBT SE | Building & Woodwork | Austria | Merger | Dualistic | Yes | No | 17/12/2004 |
| Gebr. Pfeiffer SE | Metal | Germany | Merger | Dualistic | Yes | No | 18/04/2011 |

| Company | Sector of activity | Headquarter | Form of establishment | CG structure | Inf & Cons | Part | Date of registration |
|--|--------------------------------------|-------------|-----------------------|--------------|------------|------|----------------------|
| GFK SE | Other Services | Germany | Conversion | Dualistic | Yes | Yes | 02/02/2009 |
| Hager SE | Metal | Germany | Conversion | Dualistic | Yes | No | 05/06/2007 |
| HAWE Hydraulik SE | Metal | Germany | Conversion | Dualistic | Yes | No | 05/08/2008 |
| Hochland SE | Food, Hotels, Catering & Agriculture | Germany | Conversion | Dualistic | Yes | No | 18/01/2010 |
| Huber Group Holding SE | Metal | Germany | Holding | Dualistic | Yes | No | 08/04/2008 |
| Huber SE | Metal | Germany | Conversion | Dualistic | Yes | No | 13/07/2009 |
| INTERSEROH SE | Metal & Services Commerce | Germany | Conversion | Dualistic | Yes | No | 24/09/2008 |
| James Hardie Industries SE | Services Finance | Ireland | Merger | Monistic | Yes | No | 19/02/2010 |
| James Hardie International Holdings SE | Services Finance | Ireland | Merger | Monistic | Yes | No | 19/02/2010 |
| KKCG SE | Services Finance | Cyprus | Merger | Monistic | Yes | No | 03/05/2007 |
| Klößner & Co. SE | Metal | Germany | Conversion | Dualistic | Yes | No | 08/08/2008 |
| Knauf Interfer SE | Metal & Services Commerce | Germany | Merger | Dualistic | Yes | Yes | 27/06/2008 |
| Lenze SE | Metal | Germany | Conversion | Dualistic | Yes | Yes | 14/10/2009 |
| LISEGA SE | Metal | Germany | Conversion | Dualistic | Yes | No | 27/04/2011 |
| MAN Diesel & Turbo SE | Metal | Germany | Conversion | Dualistic | Yes | Yes | 28/08/2006 |
| MAN SE | Metal | Germany | Conversion | Dualistic | Yes | Yes | 19/05/2009 |
| Mons Securities SE | Services Finance | Sweden | Conversion | Monistic | Yes | No | 30/09/2005 |
| MUTAVIE SE | Services Finance | France | Conversion | Dualistic | Yes | Yes | 06/12/2010 |
| Nordex SE | Metal | Germany | Conversion | Dualistic | Yes | No | 04/03/2010 |
| Odfjell SE | Transport | Norway | Conversion | Monistic | Yes | No | 23/07/2007 |
| Ortwin Goldbeck Holding SE | Services Finance | Germany | Conversion | Dualistic | Yes | No | 14/07/2010 |
| PCC SE | Chemicals | Germany | Conversion | Monistic | Yes | No | 05/02/2007 |
| Plansee SE | Metal | Austria | Conversion | Monistic | Yes | Yes | 11/02/2006 |
| Porsche Automobil Holding SE | Metal | Germany | Conversion | Dualistic | Yes | Yes | 13/11/2007 |
| Prosafe SE | Other | Cyprus | Conversion | Monistic | Yes | Yes | 02/02/2007 |
| Pulsion Medical Systems SE | Metal | Germany | Conversion | Monistic | Yes | No | 09/06/2011 |
| PUMA SE | Services Commerce | Germany | Conversion | Monistic | Yes | Yes | 25/07/2011 |
| Q-Cells SE | Chemicals & Metal | Germany | Merger | Dualistic | Yes | Yes | 23/10/2008 |
| Renolit SE | Chemicals | Germany | Conversion | Dualistic | Yes | Yes | 01/03/2011 |
| REpower Systems SE | Metal | Germany | Conversion | Dualistic | Yes | Yes | 15/06/2011 |
| RKW SE | Chemicals | Germany | Conversion | Dualistic | Yes | Yes | 08/10/2008 |
| RPG Industries SE | Services Finance | Cyprus | Merger | Monistic | Yes | No | 03/08/2006 |
| SCA Hygiene Products SE | Chemicals | Germany | Conversion | Dualistic | Yes | Yes | 18/09/2009 |
| Schauenburg Technology SE | Chemicals | Germany | Conversion | Monistic | Yes | No | 30/12/2009 |

| Company | Sector of activity | Headquarter | Form of establishment | CG structure | Inf & Cons | Part | Date of registration |
|---|-------------------------------|-------------|-----------------------|--------------|------------|------|----------------------|
| SCOR Global Investments SE | Services Finance | France | Conversion | Dualistic | Yes | Yes | 02/02/2009 |
| SCOR Global Life SE | Services Finance | France | Merger | Monistic | Yes | Yes | 25/07/2007 |
| SCOR Global P&C SE | Services Finance | France | Merger | Monistic | Yes | Yes | 03/08/2007 |
| SCOR SE | Services Finance | France | Conversion | Monistic | Yes | Yes | 25/06/2007 |
| SGL Carbon SE | Chemicals Metal | Germany | Conversion | Dualistic | Yes | Yes | 23/01/2009 |
| SOLON SE | Chemicals & Metal | Germany | Conversion | Dualistic | Yes | No | 02/12/2008 |
| SURTECO SE | Chemicals | Germany | Conversion | Dualistic | Yes | Yes | 20/11/2007 |
| tesa SE | Chemicals & Metal | Germany | Conversion | Dualistic | Yes | Yes | 30/03/2009 |
| Unibail-Rodamco SE | Services Finance | France | Conversion | Dualistic | Yes | No | 15/05/2009 |
| vogt group SE | Metal | Germany | Holding | Dualistic | Yes | No | 01/09/2008 |
| Wacker Neuson SE | Metal | Germany | Conversion | Dualistic | Yes | Yes | 18/02/2009 |
| Wamsler SE Household Equipment European Company | Metal | Hungary | Conversion | Dualistic | Yes | Yes | 31/08/2007 |
| WAREMA Renkhoff SE | Metal | Germany | Merger | Dualistic | Yes | Yes | 29/07/2009 |
| Weleda Benelux SE | Chemicals & Services Commerce | Netherlands | Conversion | Monistic | Yes | No | 00/00/2011 |
| WILO SE | Metal | Germany | Conversion | Dualistic | Yes | Yes | 24/07/2008 |

Abbreviations:

Inf & Cons = Information and consultation rights

Part = Participation rights at board level

CG structure = Corporate Governance structure: monistic (single-tier) or dualistic (two-tier)

Data source: ECDB, <http://ecdb.worker-participation.eu> (1 September 2011)



Scan with your smartphone for up-to-date information on registered SEs

History of the European Company Statute (ECS)

First initiatives (1960s/1970s)

The debate on the European Company dates back to the beginning of the 1960s. The topic is discussed, for example, at an international congress of notaries in Paris in 1960. In 1965, the French government issues a memorandum proposing to introduce legislation on a European Company by means of a treaty among the European Community member states. This proposal is taken up by the Commission which, in 1966, publishes a memorandum in support of this idea.

In 1970, the Commission publishes its first proposal on the Statute for a European Company (OJ C 124, 10.10.1970). This provides for:

- obligatory dualistic board structure (management board and supervisory board)
- European Works Council (information, consultation and some co-determination rights)
- board-level representation of employees (one-third of board members elected by employees, two-thirds by shareholders)
- possibility of concluding (European) collective agreements between the SE and the represented trade unions on working conditions in the SE

In 1975, the Commission presents a revised proposal with the most significant change being the proposal for a one-third allocation of the board seats: one-third of the board members to be appointed by the employees, one-third by the shareholders and the last one-third to be elected jointly by the employees and the shareholders (COM (75) 150 final).

New steps (1980s/1990s)

After the first (unsuccessful) steps in the previous decade, in 1988 the Commission tries to revive the deadlocked SE debate via a Memorandum that follows the initiative to complete the internal market. The Memorandum drops the idea of having one obligatory participation system for all SEs. Instead, companies are given the choice between different participation systems (EC-Bulletin 3/88).

A year later in 1989 a new Commission proposal is launched that for the first time splits the SE legislation into a regulation and a directive supplementing it and dealing with employee involvement. Companies now would have the choice between a monistic and a dualistic structure. The draft directive allows a choice between four different systems of board-level participation (a 'German', a 'Scandinavian', a 'French' and a 'Dutch' model). If negotiations between the employees and the management fail, the final decision would lie with the management. It is left to member states to choose which (some or all) of the four models they would accept for SEs registered in their country (OJ C 263, 16.10.1989).

In 1991, a revision of the Commission proposal is presented, with member states prescribing for SEs in their territory the choice of a particular company structure (monistic or dualistic). The system of workers' involvement is slightly modified.

If negotiations between management and employees on compulsory employee participation fail, a decision would be taken by the shareholders' meeting on the basis of reports from the two negotiating partners (Regulation: OJ C 176, 8.7.1991; Directive: OJ C 138, 29.5.1991).

A major step forward in the discussion of the European Company Statute is the compromise in 1994 of the Directive on European Works Councils (EWC). Like the ECS, the EWC Directive had remained in a state of deadlock for 25 years. The compromise is based on the principle of free negotiations on information and consultation between the management and employee representatives from the different countries in which the company has employees (the so-called special negotiating body). In the event of failure of these negotiations, obligatory standard rules (subsidiary requirements) apply. This new procedure used for the EWC is very important for the ongoing discussion on workers' involvement in the SE (Council Directive 94/45/EG, OJ L 254, 30.09.1994).

In order to overcome the blockade in the Council of Ministers with regard to the ECS, the Commission convenes a *High-level expert group on workers' involvement*, the so-called Davignon group which, in its final report published in 1997, concludes that the national systems of workers' involvement are too diverse, making general harmonisation impossible. The report therefore proposes that priority should be given 'to a negotiated solution tailored to cultural differences and taking account of the diversity of situations'. Should negotiations fail, the standard rules would apply (download at: <http://bit.ly/lHRp6H>).

Adoption and practice of the European Company Statute (2000s)

The Davignon report has a positive impact on the drafting of a solution acceptable to all the, by then, 15 member states. Even so, it is another three years until the more than 40-year-long debate on the SE comes to an end. At the EU Council in Nice in December 2000, the Regulation on the ECS and the Directive on workers' involvement in the SE are approved and formally adopted by the EC Council on 8 October 2001. The SE Directive prescribes free negotiations on information, consultation and (board-level) participation between the competent organs of the participating companies and a special negotiating body. In the event of failure of these negotiations, obligatory standard rules apply. Member states must transpose the Regulation and the Directive by October 2004 (Council Regulation 2157/2001, OJ L 294 and Council Directive 2001/86/EC, OJ L 294/22, 10.11.2001).

The SE legislation enters into force on 8 October 2004 thereby enabling companies to opt for this new corporate form. However, it takes until July 2007 before all EU27 member states and Norway, Liechtenstein and Iceland have transposed the SE Directive into national law.

The Adoption of the 10th company law directive on cross-border mergers of limited liability companies on 26 October 2005 is an important step to make mergers across European borders substantially easier. Member states need to transpose the Directive by December 2007. To safeguard existing participation rights in the situation of a

merger the mechanisms refer to those of the SE Directive and by and large uphold its participation standard (Directive 2005/56/EC, OJ L 310/1, 25.11.2005).

In April 2009, the Council adopts a revised European Works Council Directive. The recast Directive takes over some of the important improvements contained in the SE Directive, such as better definitions for information and consultation and the right to training (Directive 2009/38/EC, OJ L 122/28, of 6.5.2009).

In 2010, the European Commission starts the review procedure of the European Company Statute as foreseen in Art. 69 of the SE Regulation. The Commission is expected to forward to the Council and the European Parliament proposals for amendments in 2011/12. The same goes for the SE Directive (more information: <http://sereview.worker-participation.eu>). In July 2011, the European Commission asks the European social partners whether they want to negotiate a possible review of the SE Directive under Article 155 TFEU (the consolidated version of the Lisbon Treaty).

By September 2011, some 900 SEs are registered in the ETUI's European Company (SE) Database. However, a large part of these SEs do not have any business activities and/or employees (<http://ecdb.worker-participation.eu>).

ETUC Resolution on the European Workers Participation Fund

At its meeting in Brussels on 15– 16 October 2008, the Executive Committee of the European Trade Union Confederation (ETUC) adopted a resolution on the proposed European Workers Participation Fund (EWPF).

1. The ETUC Executive considered this proposal at its meeting on 5 and 6 December 2007 and on 24 and 26 June 2008. At the meeting in June the principle was adopted to transfer part of the remuneration of workers' representatives on SE boards to the European Workers Participation Fund established at the European Trade Union Institute (ETUI). At the same time, several questions were raised which were to be thought through before the current meeting of the ETUC Executive Committee. Questions were raised regarding the structure of the Fund and the practical use of the resources and the proportion which should stay at the national level or be transferred to the ETUC.
2. The Annex to the present resolution provides a thorough overview of the structure of the funds, the work areas for which the funds should be used and tax treatment of the (partial) transfer of the remuneration of the supervisory board or management board, as the case may be.
3. Further practical questions were considered in the draft resolution. These deal with, *inter alia*, the possible capping of funds that do not have to be transferred and the possibility for member organisations or facilities thereof to transfer more than 50% to the EWPF.
4. Concerning employee participation and co-determination in the European Union, the latest developments on the European Company (SE) and the European dimension referred to can be seen in the presentation to the ETUC Executive meeting of 24–25 June 2008.
5. The ETUC member organisations once again pledge themselves to securing a high level of co-determination in negotiations on worker participation in the European Company (SE). In nominating workers' representatives in supervisory or administrative boards, only those candidates should be supported who belong to an ETUC affiliated organisation. The nomination or appointment procedure for workers' representatives takes place within the framework of national transposed legislation. It is the responsibility of the trade unions to ensure a high level of transparency. In the event the rule is not respected, the trade unions will not support a renewal of the mandate.
6. When nominating workers' representatives to sit on the SE Board, only those candidates from ETUC member organisations will be put forward – that is, supported – that have made a binding commitment to adhere to the following regulation on transfer (see Paragraph 7).
7. Workers' representatives on an SE Board must:
 - transfer 10% of their remuneration if the remuneration is less than or equal to 3,500 euros;

- in addition to the deduction described in the first bullet point above, transfer 90% of any remaining remuneration over and above 3,500 euros.
- 8. The basis for the amount of the transfer is the value after taxation according to national rules (see explanation on taxation in the Annex).
- 9. ETUC affiliates may decide at national level that the part to be transferred could be higher than 90 per cent.
- 10. The resources will be given to the corresponding member organisations of ETUC (or their affiliates) or to trade union institutions (foundations, educational institutions and so on). These, on the other hand, are obliged to pass on 50% of the resources to the EWPF set up by ETUI. Affiliates may decide that the part transferred to the EWPF may be higher than 50%.
- 11. The resources thus transferred to ETUI will be used to support the work of workers' representatives in European Companies (SEs) (for more details see Annex).
- 12. A Board of Trustees will decide on how the resources are to be utilised.
- 13. The Board of Trustees made up of the General Secretary of the European Trade Union Confederation and General Secretaries of the European Industry Federations, as well as representatives of the national ETUC member organisations, should be limited to seven members. It can be increased as and when necessary. It should be made up of representatives of the organisations mainly affected by the transfer of remuneration rule. The members of the Board of Trustees will be appointed by the Steering Committee of the ETUC.
- 14. The ETUC General Secretary will report once a year to the ETUC Executive Committee on activities.
- 15. This arrangement will be valid, for the time being, until the year 2011. The ETUC secretariat is asked to undertake an in-depth audit in 2009 and 2010. On the basis of the assessment the secretariat will make a proposal to the Executive Committee for a renewal of this arrangement.

The ETUC resolution and its annex can be downloaded in several languages:

<http://www.etuc.org/a/5778>

On 28 April 2011, the ETUC Executive Committee confirmed the prolongation of the resolution that was adopted at its meeting of 15–16 October 2008. This prolongation should be valid for a new period of three years. An in-depth audit will be conducted on the basis of a new comprehensive report by the end of 2014. On the basis of this assessment, further prolongation will then be considered.

Declaration

As an SE employees' representative nominated by the European interest representing body as a member of the supervisory board or administrative board of (name of the company)

.....
.....
.....
.....

I consent:

– to transfer (part) of the remuneration I receive for my activities as a member of the supervisory or administrative board to a trade union or trade union-related organisation in my home country and, correspondingly;

– that 50% of the sum be transferred to the European Worker Participation Fund (EWPF) set up by the European Trade Union Institute (ETUI), Brussels.

Thereby, I accept the rules laid down by the ETUC resolution on Workers' representatives in European Companies (SEs): proposed regulation for the (partial) transfer of supervisory board remuneration of 15/16.10.2008.

In accordance with this, employees' representatives on an SE board must:

- transfer 10% of their remuneration, if that remuneration is less than or equal to € 3,500;
- in addition to the deduction described in the previous point, transfer 90% of any remaining remuneration over and above € 3,500.

The basis for the sum to be transferred is the value after tax according to national rules.

National affiliates of the ETUC may decide that the part to be transferred shall be greater than 50%.

If I am not a member of a trade union I am responsible for paying (part of) my remuneration to the EWPF in accordance with the rules explained above.

I consent to the ETUI passing information concerning my transfer to the relevant European Industry Federation and national affiliate of the ETUC (for further information on the ETUC see www.etuc.org).

Name.....

.....

Signature

.....

Place, date

.....

.....

Name and address of my employer

.....

.....

.....

.....

Name of my trade union

.....

.....

.....

.....

Return to

EWPC European Trade Union Institute
Bd du Roi Albert II, 5
1210 Brussels
Belgium

Contacts

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www.etui.org
www.worker-participation.eu

Resources

European Worker Participation Competence Centre (EWPPC)

The EWPPC coordinates and organises activities concerning transnational worker representation with a specific focus on employee board members of European Companies (SEs).

For the European Trade Union Confederation (ETUC), the promotion of worker participation has always been a top priority. In October 2008, the ETUC Executive Committee unanimously adopted a resolution to create a European Worker Participation Fund (EWPF). It was decided that:

- Financing of the Fund will be effected by transferring part of the remuneration of workers' representatives on the boards of European Companies (SEs).
- The resources of the EWPF must be used to support workers' representatives in the SEs.
- The responsibility for carrying out activities will lie with the newly created European Worker Participation Competence Centre (EWPPC).
- The Fund will be located within the European Trade Union Institute (ETUI).

The work programme of the EWPPC covers a wide range of activities, such as:

- The organisation of seminars and training for board-level employee representatives, SE representative bodies, European Works Councils and Special Negotiating Bodies
- Advisory services
- Research and expertise on the practice and further development of worker participation

- Documentation and analysis of proven practices
- Publication of handbooks and other materials.

<http://ewpcc.worker-participation.eu>

SEEurope – The research network on the European Company (SE)

SEEurope is a network project under the leadership of the ETUI. It involves legal, economic and industrial relations experts from the countries in which European Companies (SEs) can be set up.

The project started in 2004 by observing the transposition of the SE legislation into national law. Since that time the focus has shifted towards monitoring the practice of establishing SEs with a specific focus on employee involvement. Moreover, the network has been dealing with related European initiatives in the field of company law and corporate governance. SEEurope produces a broad range of publications, such as country reports, case studies and topical reports. The work is conducted with a view to also meeting the needs of practitioners in Europe involved in the founding of an SE.

<http://seeurope.worker-participation.eu/>

worker-participation.eu

The ETUI's topical website worker-participation.eu provides a broad range of information on industrial relations in Europe.

The website aims to help users see the 'bigger picture'. It reflects the view that worker participation in Europe today is composed of several elements that are linked together. Information available on the website includes:

- National Industrial Relations (available in EN, DE, FR)
- European Works Councils
- European Company (SE) / European Cooperative Society (SCE)
- European Information, Consultation & Participation Framework
- Corporate Governance & EU Company Law
- European Social Dialogue

<http://www.worker-participation.eu>

European Company (SE) Database

The ECDB provides key information on established SEs and companies in the process of registering. For each (planned) company, a specific 'SE Factsheet' is available.

A specific focus of interest is the issue of worker involvement within the SEs. The ETUI's SE database today represents the most extensive collection of information on SEs. It is widely used and referred to as the key resource on SE data. Registration for access to the SE Factsheets is free of charge.

<http://ecdb.worker-participation.eu/>

European Works Council Database (EWCDDB)

The ETUI database of European Works Councils comprises various kinds of information on EWCs, for example, on multinational companies which fulfil the criteria for application of EWC legislation and the texts of EWC agreements.

Since 2009, the EWC agreements have been progressively analysed in accordance with a single framework. The database records also examples of good and bad practices, that is, contractual solutions provided for in the EWC agreements, accompanying documents and background information.

<http://www.ewcdb.eu>

European trade union federations

ETUC European Trade Union Confederation

The ETUC has as members 83 national trade union confederations from 36 European countries, as well as 12 European trade union federations (see below), making a total of 60 million members. The ETUC is one of the European social partners and is recognised by the EU, the Council of Europe and EFTA as the only representative cross-sectoral trade union organisation at European level. <http://www.etuc.org>

EAEA European Arts and Entertainment Alliance

EAEA gathers the European members of UNI MEI, FIM and FIA. The Alliance speaks on behalf of several hundred thousand professional cultural and media workers at international and regional level – most of whom are holders of intellectual property rights. <http://www.iaea-globalunion.org/eaec>

EUROCOP European Confederation of Police

The European Confederation of Police is the European umbrella organisation of 34 Police Unions and Staff Organisations in Europe. It stands for the interests of over half a million police employees in 26 European countries. <http://www.eurocop-police.org>

EFBWW/FETBB European Federation of Building and Woodworkers

The EFBWW/FETBB is the European trade union federation for the construction industry, the building materials industry, the wood and furniture industry and the forestry industry. The EFBWW has 75 affiliated unions in 31 countries and represents a total of 2,350,000 members. <http://www.efbww.org>

EFFAT European Federation of Food, Agriculture and Tourism Trade Unions

EFFAT represents 120 national trade unions from 35 European countries and defends the interests of more than 2.6 million members. <http://www.effat.eu/>

EFJ/FEJ European Federation of Journalists

The European Federation of Journalists (EFJ) is a regional organisation of the International Federation of Journalists (IFJ). The EFJ is Europe's largest organisation of journalists, representing about 260,000 journalists in over 30 countries. <http://europe.ifj.org/>

EMCEF European Mine, Chemical and Energy Workers' Federation

EMCEF is the European Mine, Chemical and Energy Workers' Federation which organises 2.5 million workers in 35 countries and 128 national trade unions.

<http://www.emcef.org/>

EMF/FEM European Metalworkers' Federation

The EMF is the representative body defending the interests of workers in the European metal industry. The EMF is an umbrella organisation representing 75 metalworking unions from 34 countries with a combined total of 5.5 million members.

<http://www.emf-fem.org/>

EPSU European Federation of Public Service Unions

EPSU comprises 8 million public service workers from over 250 trade unions. It organises workers in the energy, water and waste sectors, health and social services and local and national administration, in all European countries including in the EU's Eastern neighbourhood. <http://www.epsu.org/>

ETF European Transport Workers' Federation

The ETF is a pan-European trade union organisation which embraces transport trade unions from the European Union, the European Economic Area and Central and Eastern European countries. It represents more than 2.5 million transport workers from 231 transport unions and 41 European countries. <http://www.itfglobal.org/etf/>

ETUCE/CSEE European Trade Union Committee for Education

The ETUCE-CSEE represents 118 teachers' unions in 28 European Union and European Free Trade Association countries. ETUCE is composed of national organisations of teachers and other staff in education. It has associated member organisations in the Central and Eastern European countries. <http://www.csee-etuice.org/>

ETUF-TCL/FSE-THC European Trade Union Federation – Textiles, Clothing and Leather

The ETUF-TCL/FSE-THC brings together 70 free and democratic trade union federations stemming from 40 European countries. As a result, the ETUF-TCL represents more than one million workers, in other terms one in three in TCL sectors within the area delimited by the Council of Europe. <http://www.etuf-tcl.org/>

UNieuropa European trade union federation for services and communication

UNieuropa unites European trade unions organising in services and communication in 50 different countries. With over 330 affiliated trade union organisations, UNieuropa represents 7 million workers. www.uni-europa.org

Further online resources

European Commission

- Website of DG Internal Market

<http://bit.ly/crZHAA>

- Website of DG Employment, Social Affairs & Inclusion

<http://bit.ly/eu9Bdz>

Legal texts

The SE legislation in the different official EU languages can be found here:

- Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE)

<http://bit.ly/p2L7iA>

- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees

<http://bit.ly/mVGtr8>

The **national transposition laws** are available on the website of the EU Commission. For most languages also an (unofficial) translation into English is available: <http://bit.ly/eu9Bdz>

Further reading

Employee involvement in companies under the European Company Statute

– Udo Rehfeldt, Eckhard Voss et al.

Eurofound has published a report about employee involvement in companies under the European Company Statute. It examines, by means of both a review of the existing literature and an in-depth study of 10 cases of corporate good practice, how employee involvement specified in this legislation is being implemented.

Transfer – European review of labour and research (issue 17/2)

The May 2011 Transfer issue takes stock of the various Commission initiatives in the fields of employee involvement at company level and social dialogue generally. It includes several articles dealing with the SE and related developments.

Worker participation: a 'burden' on the European Company (SE)? – A critical assessment of an EU consultation process

– Jan Cremers, Norbert Kluge and Michael Stollt

In March 2010, the EU Commission finally made available the so-called *Ernst & Young* study on the operation and impacts of the Statute for a European Company. Shortly afterwards the Commission launched an online consultation on the results of the study. In July 2010, the Commission produced a summary report on the replies to the online consultation. This ETUI paper brings together a critical analysis of the consultation procedure, the Commission consultation summary and the ETUI's reply to the consultation on the *Ernst & Young study*.

The European company statute – A new approach to corporate governance

– Michael Gold, Andreas Nikolopoulos and Norbert Kluge (eds)

The European Company Statute (ECS) is one of the most important pieces of legislation adopted so far by the European Union in the field of company law. Published by Peter Lang, this book provides a comprehensive analysis of the history, structure, legal basis and likely impact of the ECS, examining its evolution over some 30 years of development and its chances for integrating diverse models of corporate governance across the European Economic Area.

EMF Guidelines on the SE and Checklist

The European Metalworkers' Federation (EMF) in March 2003 adopted guidelines on the European Company (SE). In November 2004, EMF presented a checklist for an agreement on workers' involvement in SE companies (WISE). Available in EN, DE and FR.

Die Europäische Aktiengesellschaft – Roland Köstler

The publication is a timely update (5th edition) of a booklet providing a detailed overview of the SE as well as additional information on cross-border mergers. It is part of a series of practical guides for board-level employee representatives (available in German only).

Mitbestimmung in der Europäischen Aktiengesellschaft (SE) – Edgar Rose and Roland Köstler

This analysis of 42 agreements in Germany-based SEs deals with worker participation, information and consultation. Basic information on the SE is provided at the

beginning of the book. The core of the book, however, is numerous examples of portions of concrete agreements, divided up by subject area. An accompanying CD makes referencing provisions easier. The examples provide guidance for those involved in first-time negotiation or renegotiation of SE agreements (available in German only).

'In the union and on the board': experiences of board-level employee representatives across Europe – Aline Conchon, Michael Gold and Norbert Kluge

This book depicts the everyday realities of serving as an employee representative in company boardrooms, and – as importantly – the personalities behind them. Eighteen representatives located in 12 European countries introduce the reader to their experiences, as well as their duties, responsibilities and perceptions against the background of their individual character, colleagues and workplaces.

More information and further publications: <http://publications.worker-participation.eu/>

National implementation legislation (Directive 2001/ 86/ EC)

The national transposition laws are available on the website of the EU Commission. For most languages (unofficial) translations into English are available: <http://bit.ly/eu9Bdz>

A comparison tool which allows tailor-made comparisons of key aspects of the SE transposition laws can be found at <http://compareSE.worker-participation.eu>

Table 9

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| Austria | Law adopted in July 2004 Gesellschaftsrechtsänderungsgesetz 2004 – GesRÄG 2004 Bundesgesetz 82/2004; publication Bundesgesetzblatt für die Republik Österreich (BGBl.) 15/07/2004 I |
| Belgium | Interprofessional collective agreement concluded on 6 October 2004 Convention Collective de travail n° 84 du 6 octobre 2004, conclue au sein du Conseil national du Travail, concernant l'implication des travailleurs dans la société européenne; rendue obligatoire par Arrête Royal du 22 Décembre 2004; publication Moniteur Belge 19/01/2005 01476- 01498 |
| Bulgaria | Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies Promulgated in the State Gazette No. 57 of 14.07.2006 |
| Cyprus | Law 227(I)/2004 adopted in December 2004 Law N.227(I)/2004; published Cyprus Gazette 31/12/2004 |
| Czech Republic | Law 627/2004 adopted in December 2004 Zákon č. 627/2004 Sb., o evropské společnosti; publication Sbirka Zakonu CR 14/12/2004 |
| Denmark | Law on involvement in the SE adopted on 26 April 2004 Lov om medarbejderindflydelse i SE-selskaber 26/04/2004; publication Lovtidende A 27/04/2004 |

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| Estonia | EWC-SE Act adopted on 12 January 2005 Employee Involvement in the Activities of Community-Scale Undertakings, Community-Scale Groups of Undertakings and European Company Act (IEA), adopted 12 January 2005 Publication Riigi Teataja (State Gazette) on 1 February 2005 |
| Finland | Law 758/2004 adopted in August 2004 Laki/Lag 13.8.2004/758: Laki henkilööedustuksesta eurooppayhtiöissä (SE) / Lag om arbetstagarinflytande i europabolag; publication Suomen Saadoskokoelma (SK) 18/08/2004 02133-02142 758 |
| France | Loi n° 2005-842 du 26 juillet 2005 pour la confiance et la modernisation de l'économie (J.O n° 173 du 27 juillet 2005 page 12160) |
| Germany | Law on the introduction of the SE adopted on 22 December 2004 Gesetz zur Einführung der Europäischen Gesellschaft 22/12/2004; publication Bundesgesetzblatt Teil 1 (BGB 1) 28/12/2004 03675-03701 73 |
| Greece | Presidential Decree 91 of 4 May 2006 Efimeris Tis Kyvernisseos (FEK)(Tefchos A) n 92 page 00918-00924. |
| Hungary | Law adopted on 24 May 2004 Törvény 08/10/2004 2004/XLV; 2004. évi XLV. törvény az európai részvénytársaságról; publication Magyar Közlöny 28/05/2004 07292-07308 2004/72 |
| Ireland | Statutory Instrument (Regulation or Order) of 14/12/2006 No. 623 of 2006. Iris Oifigiúil of 19/12/2006 |
| Italy | Decreto Legislativo 19 agosto 2005 n. 188. Attuazione della direttive 2001/86/CE. GURI N° 220 de 21.09.2005 |
| Latvia | Law on SE adopted in March 2005 Eiropas komercsabiedrī bu likums ; publication Latvijas Vē stnesis on 24/03/2005 num: 49 |
| Lithuania | Law X-200 on SE adopted in May 2005 Lietuvos Respublikos įstatymas dėl darbuotojų dalyvavimo priimant sprendimus Europos bendrovėse Nr. X-200 ; publication on 28/05/2005 num: 67 |
| Luxembourg | Loi du 25 Août 2006. Mémorial Luxembourgeois A du: 31/08/2006 num: 152 page:02706- 02719 |
| Malta | Law L.N. 452 of 2004 adopted in October 2004. L.N. 452 of 2004 Employee Involvement (European Company) Regulations, 2004; publication. The Malta government gazette 22/10/2004 07045-07090 17667 |
| Netherlands | Law on involvement in the SE adopted on 17 March 2005. Wet rol werknemers bij de Europese vennootschap (Wet van 17 maart 2005 tot uitvoering van Richtlijn nr.2001/86/EG); publication Staatsblad van der Koninkrijk der Nederlanden 2005 / 166 & 167 on 31.03.2005 |
| Poland | Law adopted in March 2005 Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej of 4 March 2005; publication Dziennik Ustaw num: 2005/62/551 |
| Portugal | Decreto-Lei n.o 215/2005; Diaro da Republica 237 SÉRIE I-A |
| Romania | G.D. 187/2007 Journal Officiel de Roumanie N° : 161 Page : 00002-00006 |
| Slovak Republic | Law 562/2004 adopted in September 2004 Zákon č. 562/2004 Z. z. o európskej spoločnosti a o zmene a doplnení niektorých zákonov; publication Zbierka zákonov SR 23/10/2004 236 |
| Slovenia | Decree No. 001-22-25/06 Uradni list RS n. 28/2006, p. 02869-02874 of 17.3.2006 |
| Spain | LEY 31/2006, de 18 de octubre, sobre implicación de los trabajadores en las sociedades anónimas y cooperativas europeas B.O.E of 19/10/2006 num: 250/2006 page:36302-36317 |
| Sweden | Law on employee involvement in the SE adopted in June 2004 Lag om arbetstagarinflytande i europabolag; publication Svensk författningssamling (SFS) 18/06/2004 00001-00014 2004/559 |

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| United Kingdom | Regulations coming into force in October 2004 Great Britain: SI2004 N°2326; the European public limited liability company Regulations 2004 Northern Ireland: SR 2004 n°417; the European public limited liability company Regulations (Northern Ireland) 2004 Gibraltar: European Public Limited Liability Company Ordinance 2005; publication Gibraltar Gazette 31/03/2005 num 3463 |
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EEA countries:

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| Iceland | Law adopted in April 2004 Lög um aðild starfsmanna að Evrópufélögum adopted on 27 April 2004, publication No. 27 on 27.04.2004 |
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Liechtenstein

| | |
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| Norway | Law on involvement in the SE coming into force on 1 April 2005 Forskrift om arbeidstakernes rett til innflytelse i europeiske selskaper; publication Norsk Lovtidend avd I nr 4 2005 |
|--------|---|

Source of table: EU Commission, Directive 2001/86/EC – State of implementation 1st September 2007 (1/9/2007), <http://bit.ly/eu9Bdz>

Regulation on the Statute for a European Company (EC 2157/ 2001)

Council Regulation (EC) No 2157/2001

of 8 October 2001

on the Statute for a European company (SE)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas:

(1) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade must be removed, but also that the structures of production must be adapted to the Community dimension. For that purpose it is essential that companies the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.

(2) Such reorganisation presupposes that existing companies from different Member States are given the option of combining their potential by means of mergers. Such operations can be carried out only with due regard to the rules of competition laid down in the Treaty.

(3) Restructuring and cooperation operations involving companies from different Member States give rise to legal and psychological difficulties and tax problems. The approximation of Member States' company law by means of Directives based on Article 44 of the Treaty can overcome some of those difficulties. Such approximation does not, however, release companies governed by different legal systems from the obligation to choose a form of company governed by a particular national law.

(4) The legal framework within which business must be carried on in the Community is still based largely on national laws and therefore no longer corresponds to the economic framework within which it must develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.

(5) Member States are obliged to ensure that the provisions applicable to European companies under this Regulation do not result either in discrimination arising out of unjustified different treatment of European companies compared with public limited-liability companies or in disproportionate restrictions on the formation of a European company or on the transfer of its registered office.

(6) It is essential to ensure as far as possible that the economic unit and the legal unit of business in the Community coincide. For that purpose, provision should be made for the creation, side by side with companies governed by a particular national law, of companies formed and carrying on business under the law created by a Community Regulation directly applicable in all Member States.

(7) The provisions of such a Regulation will permit the creation and management of companies with a European dimension, free from the obstacles arising from the disparity and the limited territorial application of national company law.

(8) The Statute for a European public limited-liability company (hereafter referred to as "SE") is among the measures to be adopted by the Council before 1992 listed in the Commission's White Paper on completing the internal market, approved by the European Council that met in Milan in June 1985. The European Council that met in Brussels in 1987 expressed the wish to see such a Statute created swiftly.

(9) Since the Commission's submission in 1970 of a proposal for a Regulation on the Statute for a European public limited-liability company, amended in 1975, work on the approximation of national company law has made substantial progress, so that on those points where the functioning of an SE does not need uniform Community rules reference may be made to the law governing public limited-liability companies in the Member State where it has its registered office.

(10) Without prejudice to any economic needs that may arise in the future, if the essential objective of legal rules governing SEs is to be attained, it must be possible at least to create such a company as a means both of enabling companies from different Member States to merge or to create a holding company and of enabling companies and other legal persons carrying on economic activities and governed by the laws of different Member States to form joint subsidiaries.

(11) In the same context it should be possible for a public limited-liability company with a registered office and head office within the Community to transform itself into an SE without going into liquidation, provided it has a subsidiary in a Member State other than that of its registered office.

(12) National provisions applying to public limited-liability companies that offer their securities to the public and to securities transactions should also apply where an SE is formed by means of an offer of securities to the public and to SEs wishing to utilise such financial instruments.

(13) The SE itself must take the form of a company with share capital, that being the form most suited, in terms of both financing and management, to the needs of a company carrying on business on a European scale. In order to ensure that such companies are of reasonable size, a minimum amount of capital should be set so that they have sufficient assets without making it difficult for small and medium-sized undertakings to form SEs.

(14) An SE must be efficiently managed and properly supervised. It must be borne in mind that there are at present in the Community two different systems for the administration of public limited-liability companies. Although an SE should be allowed to choose between the two systems, the respective responsibilities of those responsible for management and those responsible for supervision should be clearly defined.

(15) Under the rules and general principles of private international law, where one undertaking controls another governed by a different legal system, its ensuing rights and obligations as regards the protection of minority shareholders and third parties are governed by the law governing the controlled undertaking, without prejudice to the obligations imposed on the controlling undertaking by its own law, for example the requirement to prepare consolidated accounts.

(16) Without prejudice to the consequences of any subsequent coordination of the laws of the Member States, specific rules for SEs are not at present required in this field. The rules and general principles of private international law should therefore be applied both where an SE exercises control and where it is the controlled company.

(17) The rule thus applicable where an SE is controlled by another undertaking should be specified, and for this purpose reference should be made to the law governing public limited-liability companies in the Member State in which the SE has its registered office.

(18) Each Member State must be required to apply the sanctions applicable to public limited-liability companies governed by its law in respect of infringements of this Regulation.

(19) The rules on the involvement of employees in the European company are laid down in Directive 2001/86/EC⁽⁴⁾, and those provisions thus form an indissociable complement to this Regulation and must be applied concomitantly.

(20) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.

(21) Directive 2001/86/EC is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their SE. Other social and labour legislation questions, in particular the right of employees to information and consultation as regulated in the Member States, are governed by the national provisions applicable, under the same conditions, to public limited-liability companies.

(22) The entry into force of this Regulation must be deferred so that each Member State may incorporate into its national law the provisions of Directive 2001/86/EC and set up in advance the necessary machinery for the formation and operation of SEs with registered offices within its territory, so that the Regulation and the Directive may be applied concomitantly.

(23) A company the head office of which is not in the Community should be allowed to participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy according to the principles established in the 1962 General Programme for the abolition of restrictions on freedom of establishment. Such a link exists in particular if a company has an establishment in that Member State and conducts operations therefrom.

(24) The SE should be enabled to transfer its registered office to another Member State. Adequate protection of the interests of minority shareholders who oppose the transfer, of creditors and of holders of other rights should be proportionate. Such transfer should not affect the rights originating before the transfer.

(25) This Regulation is without prejudice to any provision which may be inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention, relating to the rules of jurisdiction applicable in the case of transfer of the registered offices of a public limited-liability company from one Member State to another.

(26) Activities by financial institutions are regulated by specific directives and the national law implementing those directives and additional national rules regulating those activities apply in full to an SE.

(27) In view of the specific Community character of an SE, the "real seat" arrangement adopted by this Regulation in respect of SEs is without prejudice to Member States' laws and does not pre-empt any choices to be made for other Community texts on company law.

(28) The Treaty does not provide, for the adoption of this Regulation, powers of action other than those of Article 308 thereof.

(29) Since the objectives of the intended action, as outlined above, cannot be adequately attained by the Member States in as much as a European public limited-liability company is being established at European level and can therefore, because of the scale and impact of such company, be better attained at Community level, the Community may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in the said Article, this Regulation does not go beyond what is necessary to attain these objectives,

HAS ADOPTED THIS REGULATION:

TITLE I GENERAL PROVISIONS

Article 1

1. A company may be set up within the territory of the Community in the form of a European public limited-liability company (*Societas Europaea* or SE) on the conditions and in the manner laid down in this Regulation.
2. The capital of an SE shall be divided into shares. No shareholder shall be liable for more than the amount he has subscribed.
3. An SE shall have legal personality.
4. Employee involvement in an SE shall be governed by the provisions of Directive 2001/86/EC.

Article 2

1. Public limited-liability companies such as referred to in Annex I, formed under the law of a Member State, with registered offices and head offices within the Community may form an SE by means of a merger provided that at least two of them are governed by the law of different Member States.
2. Public and private limited-liability companies such as referred to in Annex II, formed under the law of a Member State, with registered offices and head offices within the Community may promote the formation of a holding SE provided that each of at least two of them:
 - (a) is governed by the law of a different Member State, or
 - (b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.
3. Companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community may form a subsidiary SE by subscribing for its shares, provided that each of at least two of them:
 - (a) is governed by the law of a different Member State, or
 - (b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.
4. A public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.
5. A Member State may provide that a company the head office of which is not in the Community may participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

Article 3

1. For the purposes of Article 2(1), (2) and (3), an SE shall be regarded as a public limited-liability company governed by the law of the Member State in which it has its registered office.
2. An SE may itself set up one or more subsidiaries in the form of SEs. The provisions of the law of the Member State in which a subsidiary SE has its registered office that require a public limited-liability company to have more than one shareholder shall not apply in the case of the subsidiary SE. The provisions of national law implementing the twelfth Council Company Law Directive (89/667/EEC) of 21 December 1989 on single-member private limited-liability companies⁽⁵⁾ shall apply to SEs *mutatis mutandis*.

Article 4

1. The capital of an SE shall be expressed in euro.
2. The subscribed capital shall not be less than EUR 120000.
3. The laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SEs with registered offices in that Member State.

Article 5

Subject to Article 4(1) and (2), the capital of an SE, its maintenance and changes thereto, together with its shares, bonds and other similar securities shall be governed by the provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered.

Article 6

For the purposes of this Regulation, "the statutes of the SE" shall mean both the instrument of incorporation and, where they are the subject of a separate document, the statutes of the SE.

Article 7

The registered office of an SE shall be located within the Community, in the same Member State as its head office. A Member State may in addition impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place.

Article 8

1. The registered office of an SE may be transferred to another Member State in accordance with paragraphs 2 to 13. Such a transfer shall not result in the winding up of the SE or in the creation of a new legal person.
2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 13, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, registered office and number of the SE and shall cover:
 - (a) the proposed registered office of the SE;
 - (b) the proposed statutes of the SE including, where appropriate, its new name;
 - (c) any implication the transfer may have on employees' involvement;
 - (d) the proposed transfer timetable;
 - (e) any rights provided for the protection of shareholders and/or creditors.
3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees.
4. An SE's shareholders and creditors shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine at the SE's registered office the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of those documents free of charge.
5. A Member State may, in the case of SEs registered within its territory, adopt provisions designed to ensure appropriate protection for minority shareholders who oppose a transfer.
6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 59.
7. Before the competent authority issues the certificate mentioned in paragraph 8, the SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by

the Member State where the SE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise (or may arise) prior to the transfer.

The first and second subparagraphs shall be without prejudice to the application to SEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8. In the Member State in which an SE has its registered office the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted, and evidence produced that the formalities required for registration in the country of the new registered office have been completed.

10. The transfer of an SE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SE is registered, in accordance with Article 12, in the register for its new registered office.

11. When the SE's new registration has been effected, the registry for its new registration shall notify the registry for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned in accordance with Article 13.

13. On publication of an SE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SE's registration from the register for its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SE proves that such third parties were aware of the new registered office.

14. The laws of a Member State may provide that, as regards SEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

Where an SE is supervised by a national financial supervisory authority according to Community directives the right to oppose the change of registered office applies to this authority as well. Review by a judicial authority shall be possible.

15. An SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An SE which has transferred its registered office to another Member State shall be considered, in respect of any cause of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member States where the SE was registered prior to the transfer, even if the SE is sued after the transfer.

Article 9

1. An SE shall be governed:

(a) by this Regulation,

(b) where expressly authorised by this Regulation, by the provisions of its statutes
or

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:

(i) the provisions of laws adopted by Member States in implementation of Community measures relating specifically to SEs;

- (ii) the provisions of Member States' laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office;
 - (iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office.
2. The provisions of laws adopted by Member States specifically for the SE must be in accordance with Directives applicable to public limited-liability companies referred to in Annex I.
 3. If the nature of the business carried out by an SE is regulated by specific provisions of national laws, those laws shall apply in full to the SE.

Article 10

Subject to this Regulation, an SE shall be treated in every Member State as if it were a public limited-liability company formed in accordance with the law of the Member State in which it has its registered office.

Article 11

1. The name of an SE shall be preceded or followed by the abbreviation SE.
2. Only SEs may include the abbreviation SE in their name.
3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the abbreviation SE appears shall not be required to alter their names.

Article 12

1. Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with Article 3 of the first Council Directive (68/151/EEC) of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community⁽⁶⁾.
2. An SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.
3. In order for an SE to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2001/86/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating companies must have been governed by participation rules prior to the registration of the SE.
4. The statutes of the SE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where new such arrangements determined pursuant to the Directive conflict with the existing statutes, the statutes shall to the extent necessary be amended.

In this case, a Member State may provide that the management organ or the administrative organ of the SE shall be entitled to proceed to amend the statutes without any further decision from the general shareholders meeting.

Article 13

Publication of the documents and particulars concerning an SE which must be publicised under

this Regulation shall be effected in the manner laid down in the laws of the Member State in which the SE has its registered office in accordance with Directive 68/151/EEC.

Article 14

1. Notice of an SE's registration and of the deletion of such a registration shall be published for information purposes in the Official Journal of the European Communities after publication in accordance with Article 13. That notice shall state the name, number, date and place of registration of the SE, the date and place of publication and the title of publication, the registered office of the SE and its sector of activity.
2. Where the registered office of an SE is transferred in accordance with Article 8, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.
3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 13.

TITLE II FORMATION

Section 1. General

Article 15

1. Subject to this Regulation, the formation of an SE shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE establishes its registered office.
2. The registration of an SE shall be publicised in accordance with Article 13.

Article 16

1. An SE shall acquire legal personality on the date on which it is registered in the register referred to in Article 12.
2. If acts have been performed in an SE's name before its registration in accordance with Article 12 and the SE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit, in the absence of agreement to the contrary.

Section 2. Formation by merger

Article 17

1. An SE may be formed by means of a merger in accordance with Article 2(1).
2. Such a merger may be carried out in accordance with:
 - (a) the procedure for merger by acquisition laid down in Article 3(1) of the third Council Directive (78/855/EEC) of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited-liability companies⁽⁷⁾ or
 - (b) the procedure for merger by the formation of a new company laid down in Article 4(1) of the said Directive.

In the case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place. In the case of a merger by the formation of a new company, the SE shall be the newly formed company.

Article 18

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each company involved in the formation of an SE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of public limited-liability companies in accordance with Directive 78/855/EEC.

Article 19

The laws of a Member State may provide that a company governed by the law of that Member State may not take part in the formation of an SE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 25(2). Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

Article 20

1. The management or administrative organs of merging companies shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

- (a) the name and registered office of each of the merging companies together with those proposed for the SE;
- (b) the share-exchange ratio and the amount of any compensation;
- (c) the terms for the allotment of shares in the SE;
- (d) the date from which the holding of shares in the SE will entitle the holders to share in profits and any special conditions affecting that entitlement;
- (e) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the SE;
- (f) the rights conferred by the SE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;
- (g) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;
- (h) the statutes of the SE;
- (i) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/86/EC.

2. The merging companies may include further items in the draft terms of merger.

Article 21

For each of the merging companies and subject to the additional requirements imposed by the Member State to which the company concerned is subject, the following particulars shall be published in the national gazette of that Member State:

- (a) the type, name and registered office of every merging company;
- (b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;
- (c) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
- (d) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
- (e) the name and registered office proposed for the SE.

Article 22

As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts as defined in Article 10 of Directive 78/855/EEC, appointed for those purposes at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the proposed SE, may examine the draft terms of merger and draw up a single report to all the shareholders.

The experts shall have the right to request from each of the merging companies any information they consider necessary to enable them to complete their function.

Article 23

1. The general meeting of each of the merging companies shall approve the draft terms of merger.
2. Employee involvement in the SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each of the merging companies may reserve the right to make registration of the SE conditional upon its express ratification of the arrangements so decided.

Article 24

1. The law of the Member State governing each merging company shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:
 - (a) creditors of the merging companies;
 - (b) holders of bonds of the merging companies;
 - (c) holders of securities, other than shares, which carry special rights in the merging companies.
2. A Member State may, in the case of the merging companies governed by its law, adopt provisions designed to ensure appropriate protection for minority shareholders who have opposed the merger.

Article 25

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging company, in accordance with the law on mergers of public limited-liability companies of the Member State to which the merging company is subject.
2. In each Member State concerned the court, notary or other competent authority shall issue a certificate conclusively attesting to the completion of the pre-merger acts and formalities.
3. If the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority shareholders, without preventing the registration of the merger, such procedures shall only apply if the other merging companies situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 23(1), the possibility for the shareholders of that merging company to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring company and all its shareholders.

Article 26

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SE, by the court, notary or other authority competent in the Member State of the proposed registered office of the SE to scrutinise that aspect of the legality of mergers of public limited-liability companies.

2. To that end each merging company shall submit to the competent authority the certificate referred to in Article 25(2) within six months of its issue together with a copy of the draft terms of merger approved by that company.
3. The authority referred to in paragraph 1 shall in particular ensure that the merging companies have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2001/86/EC.
4. That authority shall also satisfy itself that the SE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office in accordance with Article 15.

Article 27

1. A merger and the simultaneous formation of an SE shall take effect on the date on which the SE is registered in accordance with Article 12.
2. The SE may not be registered until the formalities provided for in Articles 25 and 26 have been completed.

Article 28

For each of the merging companies the completion of the merger shall be publicised as laid down by the law of each Member State in accordance with Article 3 of Directive 68/151/EEC.

Article 29

1. A merger carried out as laid down in Article 17(2)(a) shall have the following consequences ipso jure and simultaneously:
 - (a) all the assets and liabilities of each company being acquired are transferred to the acquiring company;
 - (b) the shareholders of the company being acquired become shareholders of the acquiring company;
 - (c) the company being acquired ceases to exist;
 - (d) the acquiring company adopts the form of an SE.
2. A merger carried out as laid down in Article 17(2)(b) shall have the following consequences ipso jure and simultaneously:
 - (a) all the assets and liabilities of the merging companies are transferred to the SE;
 - (b) the shareholders of the merging companies become shareholders of the SE;
 - (c) the merging companies cease to exist.
3. Where, in the case of a merger of public limited-liability companies, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging companies or by the SE following its registration.
4. The rights and obligations of the participating companies on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE upon its registration.

Article 30

A merger as provided for in Article 2(1) may not be declared null and void once the SE has been registered.

The absence of scrutiny of the legality of the merger pursuant to Articles 25 and 26 may be included among the grounds for the winding-up of the SE.

Article 31

1. Where a merger within the meaning of Article 17(2)(a) is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of another company, neither Article 20(1)(b), (c) and (d), Article 29(1)(b) nor Article 22 shall apply. National law governing each merging company and mergers of public limited-liability companies in accordance with Article 24 of Directive 78/855/EEC shall nevertheless apply.
2. Where a merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of another company, reports by the management or administrative body, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires. Member States may, however, provide that this paragraph may apply where a company holds shares conferring 90 % or more but not all of the voting rights.

Section 3. Formation of a holding SE

Article 32

1. A holding SE may be formed in accordance with Article 2(2).
A company promoting the formation of a holding SE in accordance with Article 2(2) shall continue to exist.
2. The management or administrative organs of the companies which promote such an operation shall draw up, in the same terms, draft terms for the formation of the holding SE. The draft terms shall include a report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the adoption of the form of a holding SE. The draft terms shall also set out the particulars provided for in Article 20(1)(a), (b), (c), (f), (g), (h) and (i) and shall fix the minimum proportion of the shares in each of the companies promoting the operation which the shareholders must contribute to the formation of the holding SE. That proportion shall be shares conferring more than 50 % of the permanent voting rights.
3. For each of the companies promoting the operation, the draft terms for the formation of the holding SE shall be publicised in the manner laid down in each Member State's national law in accordance with Article 3 of Directive 68/151/EEC at least one month before the date of the general meeting called to decide thereon.
4. One or more experts independent of the companies promoting the operation, appointed or approved by a judicial or administrative authority in the Member State to which each company is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC, shall examine the draft terms of formation drawn up in accordance with paragraph 2 and draw up a written report for the shareholders of each company. By agreement between the companies promoting the operation, a single written report may be drawn up for the shareholders of all the companies by one or more independent experts, appointed or approved by a judicial or administrative authority in the Member State to which one of the companies promoting the operation or the proposed SE is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC.
5. The report shall indicate any particular difficulties of valuation and state whether the proposed share-exchange ratio is fair and reasonable, indicating the methods used to arrive at it and whether such methods are adequate in the case in question.
6. The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE.

Employee involvement in the holding SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each company promoting the operation may reserve the right to make registration of the holding SE conditional upon its express ratification of the arrangements so decided.

7. These provisions shall apply mutatis mutandis to private limited-liability companies.

Article 33

1. The shareholders of the companies promoting such an operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares to the formation of the holding SE. That period shall begin on the date upon which the terms for the formation of the holding SE have been finally determined in accordance with Article 32.

2. The holding SE shall be formed only if, within the period referred to in paragraph 1, the shareholders of the companies promoting the operation have assigned the minimum proportion of shares in each company in accordance with the draft terms of formation and if all the other conditions are fulfilled.

3. If the conditions for the formation of the holding SE are all fulfilled in accordance with paragraph 2, that fact shall, in respect of each of the promoting companies, be publicised in the manner laid down in the national law governing each of those companies adopted in implementation of Article 3 of Directive 68/151/EEC.

Shareholders of the companies promoting the operation who have not indicated whether they intend to make their shares available to the promoting companies for the purpose of forming the holding SE within the period referred to in paragraph 1 shall have a further month in which to do so.

4. Shareholders who have contributed their securities to the formation of the SE shall receive shares in the holding SE.

5. The holding SE may not be registered until it is shown that the formalities referred to in Article 32 have been completed and that the conditions referred to in paragraph 2 have been fulfilled.

Article 34

A Member State may, in the case of companies promoting such an operation, adopt provisions designed to ensure protection for minority shareholders who oppose the operation, creditors and employees.

Section 4. Formation of a subsidiary SE

Article 35

An SE may be formed in accordance with Article 2(3).

Article 36

Companies, firms and other legal entities participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company under national law.

Section 5. Conversion of an existing public limited-liability company into an SE

Article 37

1. An SE may be formed in accordance with Article 2(4).

2. Without prejudice to Article 12 the conversion of a public limited-liability company into an

SE shall not result in the winding up of the company or in the creation of a new legal person.

3. The registered office may not be transferred from one Member State to another pursuant to Article 8 at the same time as the conversion is effected.

4. The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of an SE.

5. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called upon to decide thereon.

6. Before the general meeting referred to in paragraph 7 one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the company being converted into an SE is subject shall certify in compliance with Directive 77/91/EEC⁽⁸⁾ *mutatis mutandis* that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the Statutes.

7. The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

8. Member States may condition a conversion to a favourable vote of a qualified majority or unanimity in the organ of the company to be converted within which employee participation is organised.

9. The rights and obligations of the company to be converted on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE.

TITLE III STRUCTURE OF THE SE

Article 38

Under the conditions laid down by this Regulation an SE shall comprise:

- (a) a general meeting of shareholders and
- (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

Section 1. Two-tier system

Article 39

1. The management organ shall be responsible for managing the SE. A Member State may provide that a managing director or managing directors shall be responsible for the current management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2. The member or members of the management organ shall be appointed and removed by the supervisory organ.

A Member State may, however, require or permit the statutes to provide that the member or members of the management organ shall be appointed and removed by the general meeting under the same conditions as for public limited-liability companies that have registered offices within its territory.

3. No person may at the same time be a member of both the management organ and the supervisory organ of the same SE. The supervisory organ may, however, nominate one of its members to act as a member of the management organ in the event of a vacancy. During such a period the functions of the person concerned as a member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4. The number of members of the management organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, fix a minimum and/or a maximum number.

5. Where no provision is made for a two-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

Article 40

1. The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE.

2. The members of the supervisory organ shall be appointed by the general meeting. The members of the first supervisory organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

3. The number of members of the supervisory organ or the rules for determining it shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory organ for SEs registered within its territory or a minimum and/or a maximum number.

Article 41

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business.

2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.

3. The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision in accordance with Article 40(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

Article 42

The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

Section 2. The one-tier system

Article 43

1. The administrative organ shall manage the SE. A Member State may provide that a managing director or managing directors shall be responsible for the day-to-day management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2. The number of members of the administrative organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, set a minimum and, where necessary, a maximum number of members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2001/86/EC.

3. The member or members of the administrative organ shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

4. Where no provision is made for a one-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

Article 44

1. The administrative organ shall meet at least once every three months at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE's business.

2. Each member of the administrative organ shall be entitled to examine all information submitted to it.

Article 45

The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

Section 3. Rules common to the one-tier and two-tier systems

Article 46

1. Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be reappointed once or more than once for the period determined in accordance with paragraph 1.

Article 47

1. An SE's statutes may permit a company or other legal entity to be a member of one of its organs, provided that the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated does not provide otherwise.

That company or other legal entity shall designate a natural person to exercise its functions on the organ in question.

2. No person may be a member of any SE organ or a representative of a member within the meaning of paragraph 1 who:

(a) is disqualified, under the law of the Member State in which the SE's registered office is situated, from serving on the corresponding organ of a public limited-liability company governed by the law of that Member State, or

(b) is disqualified from serving on the corresponding organ of a public limited-liability company governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

3. An SE's statutes may, in accordance with the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, lay down special

conditions of eligibility for members representing the shareholders.

4. This Regulation shall not affect national law permitting a minority of shareholders or other persons or authorities to appoint some of the members of a company organ.

Article 48

1. An SE's statutes shall list the categories of transactions which require authorisation of the management organ by the supervisory organ in the two-tier system or an express decision by the administrative organ in the one-tier system.

A Member State may, however, provide that in the two-tier system the supervisory organ may itself make certain categories of transactions subject to authorisation.

2. A Member State may determine the categories of transactions which must at least be indicated in the statutes of SEs registered within its territory.

Article 49

The members of an SE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SE the disclosure of which might be prejudicial to the company's interests, except where such disclosure is required or permitted under national law provisions applicable to public limited-liability companies or is in the public interest.

Article 50

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SE organs shall be as follows:

(a) quorum: at least half of the members must be present or represented;

(b) decision-taking: a majority of the members present or represented.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

3. Where employee participation is provided for in accordance with Directive 2001/86/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to public limited-liability companies governed by the law of the Member State concerned.

Article 51

Members of an SE's management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

Section 4. General meeting

Article 52

The general meeting shall decide on matters for which it is given sole responsibility by:

(a) this Regulation or

(b) the legislation of the Member State in which the SE's registered office is situated adopted in implementation of Directive 2001/86/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a public limited-liability company governed by the law of the Member State in which the SE's registered office is situated, either by the law of that Member State or by the SE's statutes in accordance with that law.

Article 53

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

Article 54

1. An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SE's registered office is situated applicable to public limited-liability companies carrying on the same type of activity as the SE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SE's incorporation.
2. General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

Article 55

1. One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request the SE to convene a general meeting and draw up the agenda therefor; the SE's statutes or national legislation may provide for a smaller proportion under the same conditions as those applicable to public limited-liability companies.
2. The request that a general meeting be convened shall state the items to be put on the agenda.
3. If, following a request made under paragraph 1, a general meeting is not held in due time and, in any event, within two months, the competent judicial or administrative authority within the jurisdiction of which the SE's registered office is situated may order that a general meeting be convened within a given period or authorise either the shareholders who have requested it or their representatives to convene a general meeting. This shall be without prejudice to any national provisions which allow the shareholders themselves to convene general meetings.

Article 56

One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request that one or more additional items be put on the agenda of any general meeting. The procedures and time limits applicable to such requests shall be laid down by the national law of the Member State in which the SE's registered office is situated or, failing that, by the SE's statutes. The above proportion may be reduced by the statutes or by the law of the Member State in which the SE's registered office is situated under the same conditions as are applicable to public limited-liability companies.

Article 57

Save where this Regulation or, failing that, the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires a larger majority, the general meeting's decisions shall be taken by a majority of the votes validly cast.

Article 58

The votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or spoiled ballot paper.

Article 59

1. Amendment of an SE's statutes shall require a decision by the general meeting taken by a majority which may not be less than two thirds of the votes cast, unless the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires or permits a larger majority.
2. A Member State may, however, provide that where at least half of an SE's subscribed capital is represented, a simple majority of the votes referred to in paragraph 1 shall suffice.
3. Amendments to an SE's statutes shall be publicised in accordance with Article 13.

Article 60

1. Where an SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote by each class of shareholders whose class rights are affected thereby.
2. Where a decision by the general meeting requires the majority of votes specified in Article 59(1) or (2), that majority shall also be required for the separate vote by each class of shareholders whose class rights are affected by the decision.

TITLE IV ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

Article 61

Subject to Article 62 an SE shall be governed by the rules applicable to public limited-liability companies under the law of the Member State in which its registered office is situated as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

Article 62

1. An SE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions⁽⁹⁾ as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.
2. An SE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings⁽¹⁰⁾ as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

TITLE V WINDING UP, LIQUIDATION, INSOLVENCY AND CESSATION OF PAYMENTS

Article 63

As regards winding up, liquidation, insolvency, cessation of payments and similar procedures, an SE shall be governed by the legal provisions which would apply to a public limited-liability company formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

Article 64

1. When an SE no longer complies with the requirement laid down in Article 7, the Member State in which the SE's registered office is situated shall take appropriate measures to oblige the SE to regularise its position within a specified period either:
 - (a) by re-establishing its head office in the Member State in which its registered office is situated or
 - (b) by transferring the registered office by means of the procedure laid down in Article 8.
2. The Member State in which the SE's registered office is situated shall put in place the measures necessary to ensure that an SE which fails to regularise its position in accordance with paragraph 1 is liquidated.
3. The Member State in which the SE's registered office is situated shall set up a judicial remedy with regard to any established infringement of Article 7. That remedy shall have a suspensory effect on the procedures laid down in paragraphs 1 and 2.
4. Where it is established on the initiative of either the authorities or any interested party that an SE has its head office within the territory of a Member State in breach of Article 7, the authorities of that Member State shall immediately inform the Member State in which the SE's registered office is situated.

Article 65

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding up, liquidation, insolvency or cessation of payment procedures and any decision to continue operating shall be publicised in accordance with Article 13.

Article 66

1. An SE may be converted into a public limited-liability company governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.
2. The conversion of an SE into a public limited-liability company shall not result in the winding up of the company or in the creation of a new legal person.
3. The management or administrative organ of the SE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of the adoption of the public limited-liability company for the shareholders and for the employees.
4. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called to decide thereon.
5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member

State to which the SE being converted into a public limited-liability company is subject shall certify that the company has assets at least equivalent to its capital.

6. The general meeting of the SE shall approve the draft terms of conversion together with the statutes of the public limited-liability company. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

TITLE VI ADDITIONAL AND TRANSITIONAL PROVISIONS

Article 67

1. If and so long as the third phase of economic and monetary union (EMU) does not apply to it each Member State may make SEs with registered offices within its territory subject to the same provisions as apply to public limited-liability companies covered by its legislation as regards the expression of their capital. An SE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SE.

2. If and so long as the third phase of EMU does not apply to the Member State in which an SE has its registered office, the SE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/60/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu⁽¹¹⁾.

TITLE VII FINAL PROVISIONS

Article 68

1. The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

2. Each Member State shall designate the competent authorities within the meaning of Articles 8, 25, 26, 54, 55 and 64. It shall inform the Commission and the other Member States accordingly.

Article 69

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:

- (a)** allowing the location of an SE's head office and registered office in different Member States;
- (b)** broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;
- (c)** revising the jurisdiction clause in Article 8(16) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;

(d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State.

Article 70

This Regulation shall enter into force on 8 October 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 8 October 2001.

For the Council

The President

L. Onkelinx

- (1) OJ C 263, 16.10.1989, p. 41 and OJ C 176, 8.7.1991, p. 1.
- (2) Opinion of 4 September 2001 (not yet published in the Official Journal).
- (3) OJ C 124, 21.5.1990, p. 34.
- (4) See p. 22 of this Official Journal.
- (5) OJ L 395, 30.12.1989, p. 40. Directive as last amended by the 1994 Act of Accession.
- (6) OJ L 65, 14.3.1968, p. 8. Directive as last amended by the 1994 Act of Accession.
- (7) OJ L 295, 20.10.1978, p. 36. Directive as last amended by the 1994 Act of Accession.
- (8) Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1). Directive as last amended by the 1994 Act of Accession.
- (9) OJ L 126, 26.5.2000, p. 1.
- (10) OJ L 374, 31.12.1991, p. 7.
- (11) OJ L 317, 16.11.1990, p. 57.

ANNEX I

PUBLIC LIMITED-LIABILITY COMPANIES REFERRED TO IN ARTICLE 2(1)

BELGIUM:

la société anonyme/ de naamloze vennootschap

DENMARK:

aktieselskaber

GERMANY:

die Aktiengesellschaft

GREECE:

ανώνυμη εταιρία

SPAIN:

la sociedad anónima

FRANCE:

la société anonyme

IRELAND:

public companies limited by shares
public companies limited by guarantee having a share capital

ITALY:

società per azioni

LUXEMBOURG:

la société anonyme

NETHERLANDS:

de naamloze vennootschap

AUSTRIA:

die Aktiengesellschaft

PORTUGAL:

a sociedade anónima de responsabilidade limitada

FINLAND:

julkinen osakeyhtiö//publikt aktiebolag

SWEDEN:

publikt aktiebolag

UNITED KINGDOM:

public companies limited by shares
public companies limited by guarantee having a share capital

ANNEX II

**PUBLIC AND PRIVATE LIMITED-LIABILITY COMPANIES REFERRED TO IN
ARTICLE 2(2)**

BELGIUM:

la société anonyme//de naamloze vennootschap,
la société privée à responsabilité limitée//besloten vennootschap met beperkte aansprakelijkheid

DENMARK:

aktieselskaber,
anpartselskaber

GERMANY:

die Aktiengesellschaft,
die Gesellschaft mit beschränkter Haftung

GREECE:

ανώνυμη εταιρία

εταιρία περιορισμένης ευθύνης

SPAIN:

la sociedad anónima,
la sociedad de responsabilidad limitada

FRANCE:

la société anonyme,
la société à responsabilité limitée

IRELAND:

public companies limited by shares,
public companies limited by guarantee having a share capital,
private companies limited by shares,
private companies limited by guarantee having a share capital

ITALY:

società per azioni,
società a responsabilità limitata

LUXEMBOURG:

la société anonyme,
la société à responsabilité limitée

NETHERLANDS:

de naamloze vennootschap,
de besloten vennootschap met beperkte aansprakelijkheid

AUSTRIA:

die Aktiengesellschaft,
die Gesellschaft mit beschränkter Haftung

PORTUGAL:

a sociedade anónima de responsabilidade limitada,
a sociedade por quotas de responsabilidade limitada

FINLAND:

osakeyhtiö
aktiebolag

SWEDEN:

aktiebolag

UNITED KINGDOM:

public companies limited by shares,
public companies limited by guarantee having a share capital,
private companies limited by shares,
private companies limited by guarantee having a share capital

Directive supplementing the Statute for a European Company with regard to the involvement of employees (2001/86/EC)

Council Directive 2001/86/EC

of 8 October 2001

supplementing the Statute for a European Company with regard to the involvement of employees

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the amended proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas:

- (1) In order to attain the objectives of the Treaty, Council Regulation (EC) No 2157/2001⁴ establishes a Statute for a European company (SE).
- (2) That Regulation aims at creating a uniform legal framework within which companies from different Member States should be able to plan and carry out the reorganisation of their business on a Community scale.
- (3) In order to promote the social objectives of the Community, special provisions have to be set, notably in the field of employee involvement, aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. This objective should be pursued through the establishment of a set of rules in this field, supplementing the provisions of the Regulation.
- (4) Since the objectives of the proposed action, as outlined above, cannot be sufficiently achieved by the Member States, in that the object is to establish a set of rules on employee involvement applicable to the SE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve these objectives.
- (5) The great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives are involved in decision-making within companies makes it inadvisable to set up a single European model of employee involvement applicable to the SE.
- (6) Information and consultation procedures at transnational level should nevertheless be ensured in all cases of creation of an SE.
- (7) If and when participation rights exist within one or more companies establishing an SE, they should be preserved through their transfer to the SE, once established, unless the parties decide otherwise.
- (8) The concrete procedures of employee transnational information and consultation, as well as, if applicable, participation, to apply to each SE should be defined primarily by means of an agreement between the parties concerned or, in the absence thereof, through the application of a set of subsidiary rules.

- (9) Member States should still have the option of not applying the standard rules relating to participation in the case of a merger, given the diversity of national systems for employee involvement. Existing systems and practices of participation where appropriate at the level of participating companies must in that case be maintained by adapting registration rules.
- (10) The voting rules within the special body representing the employees for negotiation purposes, in particular when concluding agreements providing for a level of participation lower than the one existing within one or more of the participating companies, should be proportionate to the risk of disappearance or reduction of existing systems and practices of participation. That risk is greater in the case of an SE established by way of transformation or merger than by way of creating a holding company or a common subsidiary.
- (11) In the absence of an agreement subsequent to the negotiation between employees' representatives and the competent organs of the participating companies, provision should be made for certain standard requirements to apply to the SE, once it is established. These standard requirements should ensure effective practices of transnational information and consultation of employees, as well as their participation in the relevant organs of the SE if and when such participation existed before its establishment within the participating companies.
- (12) Provision should be made for the employees' representatives acting within the framework of the Directive to enjoy, when exercising their functions, protection and guarantees which are similar to those provided to employees' representatives by the legislation and/or practice of the country of employment. They should not be subject to any discrimination as a result of the lawful exercise of their activities and should enjoy adequate protection as regards dismissal and other sanctions.
- (13) The confidentiality of sensitive information should be preserved even after the expiry of the employees' representatives terms of office and provision should be made to allow the competent organ of the SE to withhold information which would seriously harm, if subject to public disclosure, the functioning of the SE.
- (14) Where an SE and its subsidiaries and establishments are subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees⁵, the provisions of that Directive and the provision transposing it into national legislation should not apply to it nor to its subsidiaries and establishments, unless the special negotiating body decides not to open negotiations or to terminate negotiations already opened.
- (15) This Directive should not affect other existing rights regarding involvement and need not affect other existing representation structures, provided for by Community and national laws and practices.
- (16) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.
- (17) The Treaty has not provided the necessary powers for the Community to adopt the proposed Directive, other than those provided for in Article 308.
- (18) It is a fundamental principle and stated aim of this Directive to secure employees' acquired rights as regards involvement in company decisions. Employee rights in force before the establishment of SEs should provide the basis for employee rights of involvement in the SE (the "before and after" principle). Consequently, that approach should apply not only to the initial establishment of an SE but also to structural changes in an existing SE and to the companies affected by structural change processes.
- (19) Member States should be able to provide that representatives of trade unions may be members of a special negotiating body regardless of whether they are employees of a company participating in the establishment of an SE. Member States should in this context in particular

be able to introduce this right in cases where trade union representatives have the right to be members of, and to vote in, supervisory or administrative company organs in accordance with national legislation.

(20) In several Member States, employee involvement and other areas of industrial relations are based on both national legislation and practice which in this context is understood also to cover collective agreements at various national, sectoral and/or company levels,

HAS ADOPTED THIS DIRECTIVE:

SECTION I. GENERAL

Article 1

Objective

1. This Directive governs the involvement of employees in the affairs of European public limited-liability companies (*Societas Europaea*, hereinafter referred to as "SE"), as referred to in Regulation (EC) No 2157/2001.
2. To this end, arrangements for the involvement of employees shall be established in every SE in accordance with the negotiating procedure referred to in Articles 3 to 6 or, under the circumstances specified in Article 7, in accordance with the Annex.

Article 2

Definitions

For the purposes of this Directive:

- (a) "SE" means any company established in accordance with Regulation (EC) No 2157/2001;
- (b) "participating companies" means the companies directly participating in the establishing of an SE;
- (c) "subsidiary" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC;
- (d) "concerned subsidiary or establishment" means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation;
- (e) "employees' representatives" means the employees' representatives provided for by national law and/or practice;
- (f) "representative body" means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE;
- (g) "special negotiating body" means the body established in accordance with Article 3 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;
- (h) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;
- (i) "information" means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State

at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE;

(j) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE;

(k) "participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:

- the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
- the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

SECTION II. NEGOTIATING PROCEDURE

Article 3

Creation of a special negotiating body

1. Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.

2. For this purpose, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created in accordance with the following provisions:

- (a)** in electing or appointing members of the special negotiating body, it must be ensured:
- (i)** that these members are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together;
 - (ii)** that in the case of an SE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE, in so far as:
 - the number of such additional members does not exceed 20 % of the number of members designated by virtue of point (i), and
 - the composition of the special negotiating body does not entail a double representation of the employees concerned.

If the number of such companies is higher than the number of additional seats available pursuant to the first subparagraph, these additional seats shall be allocated to companies

in different Member States by decreasing order of the number of employees they employ;
(b) Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories. They shall take the necessary measures to ensure that, as far as possible, such members shall include at least one member representing each participating company which has employees in the Member State concerned. Such measures must not increase the overall number of members.

Member States may provide that such members may include representatives of trade unions whether or not they are employees of a participating company or concerned subsidiary or establishment.

Without prejudice to national legislation and/or practice laying down thresholds for the establishing of a representative body, Member States shall provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.

3. The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE.

To this end, the competent organs of the participating companies shall inform the special negotiating body of the plan and the actual process of establishing the SE, up to its registration.

4. Subject to paragraph 6, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States,

- in the case of an SE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating companies, or
- in the case of an SE to be established by way of creating a holding company or forming a subsidiary, if participation covers at least 50 % of the overall number of employees of the participating companies.

Reduction of participation rights means a proportion of members of the organs of the SE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating companies.

5. For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

6. The special negotiating body may decide by the majority set out below not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SE has employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 4. Where such a decision has been taken, none of the provisions of the Annex shall apply.

The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the

votes of members representing employees employed in at least two Member States.

In the case of an SE established by way of transformation, this paragraph shall not apply if there is participation in the company to be transformed.

The special negotiating body shall be reconvened on the written request of at least 10 % of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Annex shall apply.

7. Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

Article 4

Content of the agreement

1. The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.

2. Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 between the competent organs of the participating companies and the special negotiating body shall specify:

- (a) the scope of the agreement;
- (b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;
- (c) the functions and the procedure for the information and consultation of the representative body;
- (d) the frequency of meetings of the representative body;
- (e) the financial and material resources to be allocated to the representative body;
- (f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
- (g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;
- (h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

3. The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Annex.

4. Without prejudice to Article 13(3)(a), in the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE.

Article 5

Duration of negotiations

1. Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.
2. The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year from the establishment of the special negotiating body.

Article 6

Legislation applicable to the negotiation procedure

Except where otherwise provided in this Directive, the legislation applicable to the negotiation procedure provided for in Articles 3 to 5 shall be the legislation of the Member State in which the registered office of the SE is to be situated.

Article 7

Standard rules

1. In order to achieve the objective described in Article 1, Member States shall, without prejudice to paragraph 3 below, lay down standard rules on employee involvement which must satisfy the provisions set out in the Annex.

The standard rules as laid down by the legislation of the Member State in which the registered office of the SE is to be situated shall apply from the date of the registration of the SE where either:

- (a) the parties so agree; or
- (b) by the deadline laid down in Article 5, no agreement has been concluded, and:
 - the competent organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE, and
 - the special negotiating body has not taken the decision provided in Article 3(6).
2. Moreover, the standard rules fixed by the national legislation of the Member State of registration in accordance with part 3 of the Annex shall apply only:
 - (a) in the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a company transformed into an SE;
 - (b) in the case of an SE established by merger:
 - if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25 % of the total number of employees in all the participating companies, or
 - if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25 % of the total number of employees in all the participating companies and if the special negotiating body so decides,
 - (c) in the case of an SE established by setting up a holding company or establishing a subsidiary:
 - if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50 % of the total number of employees in all the participating companies; or
 - if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 50 % of the total number of employees in all the participating companies and if the special negotiating body so decides.

If there was more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms must be established in the SE. Member States may fix the rules which are applicable in the absence of any decision on the matter for an SE registered in their territory. The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to this paragraph.

3. Member States may provide that the reference provisions in part 3 of the Annex shall not apply in the case provided for in point (b) of paragraph 2.

SECTION III. MISCELLANEOUS PROVISIONS

Article 8

Reservation and confidentiality

1. Member States shall provide that members of the special negotiating body or the representative body, and experts who assist them, are not authorised to reveal any information which has been given to them in confidence.

The same shall apply to employees' representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the supervisory or administrative organ of an SE or of a participating company established in its territory is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SE (or, as the case may be, the participating company) or its subsidiaries and establishments or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

3. Each Member State may lay down particular provisions for SEs in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in the national legislation.

4. In applying paragraphs 1, 2 and 3, Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SE or participating company demands confidentiality or does not give information.

Such procedures may include arrangements designed to protect the confidentiality of the information in question.

Article 9

Operation of the representative body and procedure for the information and consultation of employees

The competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

The same shall apply to cooperation between the supervisory or administrative organ of the SE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

Article 10

Protection of employees' representatives

The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment. This shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 4(2)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating company or the SE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

Article 11

Misuse of procedures

Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

Article 12

Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of an SE and the supervisory or administrative organs of subsidiaries and of participating companies which are situated within its territory and the employees' representatives or, as the case may be, the employees themselves abide by the obligations laid down by this Directive, regardless of whether or not the SE has its registered office within its territory.
2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular they shall ensure that administrative or legal procedures are available to enable the obligations deriving from this Directive to be enforced.

Article 13

Link between this Directive and other provisions

1. Where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Directive 94/45/EC or of Directive 97/74/EC⁶ extending the said Directive to the United Kingdom, the provisions of these Directives and the provisions transposing them into national legislation shall not apply to them or to their subsidiaries.

However, where the special negotiating body decides in accordance with Article 3(6) not to open negotiations or to terminate negotiations already opened, Directive 94/45/EC or Directive 97/74/EC and the provisions transposing them into national legislation shall apply.

2. Provisions on the participation of employees in company bodies provided for by national legislation and/or practice, other than those implementing this Directive, shall not apply to companies established in accordance with Regulation (EC) No 2157/2001 and covered by this Directive.

3. This Directive shall not prejudice:

- (a) the existing rights to involvement of employees provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;

(b) the provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SE.

4. In order to preserve the rights referred to in paragraph 3, Member States may take the necessary measures to guarantee that the structures of employee representation in participating companies which will cease to exist as separate legal entities are maintained after the registration of the SE.

Article 14

Final provisions

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 8 October 2004, or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 15

Review by the Commission

No later than 8 October 2007, the Commission shall, in consultation with the Member States and with management and labour at Community level, review the procedures for applying this Directive, with a view to proposing suitable amendments to the Council where necessary.

Article 16

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 17

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 8 October 2001.

For the Council

The President

L. Onkelinx

(1) OJ C 138, 29.5.1991, p. 8.

(2) OJ C 342, 20.12.1993, p. 15.

(3) OJ C 124, 21.5.1990, p. 34.

(4) See page 1 of this Official Journal.

(5) OJ L 254, 30.9.1994, p. 64. Directive as last amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

(6) OJ L 10, 16.1.1998, p. 22.

ANNEX

STANDARD RULES

(referred to in Article 7)

Part 1: Composition of the body representative of the employees

In order to achieve the objective described in Article 1, and in the cases referred to in Article 7, a representative body shall be set up in accordance with the following rules.

(a) The representative body shall be composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

(b) The election or appointment of members of the representative body shall be carried out in accordance with national legislation and/or practice.

Member States shall lay down rules to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SE and its subsidiaries and establishments.

(c) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.

(d) The representative body shall adopt its rules of procedure.

(e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

(f) The competent organ of the SE shall be informed of the composition of the representative body.

(g) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 4 and 7 or to continue to apply the standard rules adopted in accordance with this Annex.

Articles 3(4) to (7) and 4 to 6 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 4, in which case the term "special negotiating body" shall be replaced by "representative body". Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

Part 2: Standard rules for information and consultation

The competence and powers of the representative body set up in an SE shall be governed by the following rules.

(a) The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

(b) Without prejudice to meetings held pursuant to point (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects. The local managements shall be informed accordingly.

The competent organ of the SE shall provide the representative body with the agenda for mee-

tings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests. Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement.

In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

The meetings referred to above shall not affect the prerogatives of the competent organ.

(d) Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with the third subparagraph of paragraph (c), shall be entitled to meet without the representatives of the competent organ being present.

(e) Without prejudice to Article 8, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

(f) The representative body or the select committee may be assisted by experts of its choice.

(g) In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.

(h) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.

Part 3: Standard rules for participation

Employee participation in an SE shall be governed by the following provisions

(a) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. Point (b) shall apply *mutatis mutandis* to that end.

(b) In other cases of the establishing of an SE, the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation. The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.

Abbreviations

BLER= Board-level employee representative
 ECS= European Company Statute
 EEA= European Economic Area
 EU= European Union
 EU27= Member states of the European Union
 EU27+3= Member states of the European Union + Iceland, Liechtenstein and Norway
 ETUC= European Trade Union Confederation
 ETUI= European Trade Union Institute
 EWC= European Works Council
 EWPPC= European Worker Participation Competence Centre
 EWPF= European Worker Participation Fund
 PLC= public limited liability company
 SE= Societas Europaea or European Company
 SE-WC= SE-Works Council (representative body)
 SNB= special negotiating body

Country codes

| | | |
|--------------------|-------------------|--------------------|
| AT= Austria | FR= France | MT= Malta |
| BE= Belgium | GR= Greece | NL= Netherlands |
| BG= Bulgaria | HU= Hungary | NO= Norway |
| CY= Cyprus | IR= Ireland | PL= Poland |
| CZ= Czech Republic | IS= Iceland | PT= Portugal |
| DE= Germany | IT= Italy | RO= Romania |
| DK= Denmark | LI= Liechtenstein | SE= Sweden |
| EE= Estonia | LT= Lithuania | SI= Slovenia |
| ES= Spain | LU= Luxembourg | SK= Slovakia |
| FI= Finland | LV= Latvia | UK= United Kingdom |

The ETUI

The ETUI conducts research in areas of relevance to the trade unions, including the labour market and industrial relations, and produces European comparative studies in these and related areas. It also provides trade union educational and training activities and technical support in the field of occupational health and safety. Through its expertise, scientific publications, specialist journals and training programmes, the ETUI provides European trade unions with the tools to participate in the European debate and to contribute actively to the development of the Social Dialogue and the achievement of Social Europe. Its current work programme is built around the following five priorities: crisis, economic and social governance and Europe 2020, sustainable development/climate change, worker participation, social dialogue and trade union renewal.

The European Trade Union Institute is an international non-profit-making association established under Belgian law and financially supported by the European Union.

For more detailed information on the ETUI please visit the homepage www.etui.org.

In October 2001, the EU formally adopted the legislation on the European Company, also known by its Latin name *Societas Europaea* (SE). It consists of a Regulation on the European Company Statute and an accompanying Directive on employee involvement within the SE. Since the entry into force of these SE rules, companies can freely opt for this new corporate form.

The principal intention of the SE legislation on the part of the European legislator has always been to enable companies to operate more easily across European borders. However, it also opens up new possibilities for employee representation at European level. Indeed, the SE Directive takes worker involvement within multinational companies one step further. Before an SE can be registered, management and worker representatives have to negotiate an agreement on how the workers will be involved in the future SE.

The scope of these negotiations not only includes the establishment of a transnational *information* and *consultation* body (SE Works Council) but also introduces the possibility of worker *participation* in the SE's administrative or supervisory board.

This handbook aims to ensure that the opportunities provided by the SE legislation are seized. It has been designed first and foremost to help practitioners to prepare and conduct negotiations on agreements on employee involvement in SEs. The handbook introduces the SE and its mechanism of employee involvement. It explains the negotiation procedures and provides 'tips and tricks' for a decent preparation of negotiations. Based on the experience of several experts, it gives an overview of key aspects of an SE agreement and includes an extensive set of overviews, graphics and comparative tables.

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