European Foundation for the Improvement of Living and Working Conditions

Employee involvement in companies under the European Company Statute

Employee involvement in companies under the European Company Statute

Authors: Udo Rehfeldt (Institut de Recherches Économiques et Sociales, Paris), Eckhard Voss (Wilke, Maack and Partner, Hamburg), Valeria Pulignano (Centre for Sociological Research, Katholieke Universiteit Leuven), Melinda Kelemen (SEEurope network correspondent and researcher, London), Volker Telljohann (IRES Emilia-Romagna, Bologna), Lionel Fulton (Labour Research Department, London), László Neumann and Dániel Mester (Institute for Social Policy and Labour, Budapest), Kim Schütze and Peter Wilke (Wilke, Maack and Partner, Hamburg]
Research managers: Christian Welz and Jean-Michel Miller
Research project: Employee Involvement in companies under the European Company Statute

European Foundation for the Improvement of Living and Working Conditions

Employee involvement in companies under the European Company Statute

Wyattville Road, Loughlinstown, Dublin 18, Ireland - Tel: (+353 1) 204 31 00 - Fax: (+353 1) 282 42 09 / 282 64 56
email: information@eurofound.europa.eu - website: www.eurofound.europa.eu

Cataloguing data can be found at the end of this publication.

Luxembourg: Publications Office of the European Union, 2011

doi: 10.2806/22977
ISBN 978-92-897-0881-4

The European Foundation for the Improvement of Living and Working Conditions (Eurofound) is an autonomous body of the European Union, created to assist in the formulation of future policy on social and work-related matters. Further information can be found on the Foundation website at www.eurofound.europa.eu

European Foundation for the Improvement of Living and Working Conditions
Wyattville Road
Loughlinstown
Dublin 18
Ireland
Telephone: (+353 1) 204 31 00
Fax: (+353 1) 282 42 09 / 282 64 56
Email: information@eurofound.europa.eu
www.eurofound.europa.eu

NORDIC ENVIRONMENTAL LABEL
541 006
Printed matter

Printed in Denmark

The paper used in this book is chlorine-free and comes from managed forests in northern Europe.
For every tree felled, at least one new tree is planted.

Foreword

The European Company Statute is one of the most important pieces of company legislation to be published by the European Union. Since 2004, it has enabled companies operating in more than one Member State to bring their cross-border businesses under the umbrella of a single legal framework, which thereby reduces the costs of operating in more than one Member State. However, in line with the European Social Model, EU legislation goes further, seeking to incorporate a framework for employee information, consultation and participation into this new legal form.

This report examines, by means of both a review of existing literature and an in-depth study of 10 cases of corporate good practice, how the employee involvement specified in this legislation is being implemented in practice. The legislation includes a stipulation that the European Commission report on the practical application of the statute and propose amendments if deemed necessary. Through its research, Eurofound seeks to contribute to this process of evaluation, which includes public consultation as part of its remit. We trust that it will be of benefit in illuminating how the European Company Statute works in practice and its success to date in implementing the goal of facilitating employee involvement.

Juan Menéndez-Valdés
Director

Erika Mezger
Deputy Director

Country codes

EU15 15 EU Member States prior to enlargement in 2004 (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom)

NMS12 12 new Member States, 10 of which joined the EU in 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the remaining two in 2007 (Bulgaria and Romania)

EU27 27 EU Member States

EU27

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DK	Denmark
EE	Estonia
FI	Finland
FR	France
DE	Germany
EL	Greece
HU	Hungary
IE	Ireland
IT	Italy
LV	Latvia
LT	Lithuania
LU	Luxembourg
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SK	Slovakia
SI	Slovenia
ES	Spain
SE	Sweden
UK	United Kingdom

Contents

Foreword v

Executive summary 1

Introduction 5

1 – Review of literature and policy debate 9

The European Company and industrial relations research 9

The directive on employee participation in the light of EU-level debates 18

Conclusions 23

2 – Inventory of SE agreements 25

Overview of existing SEs 25

Basic characteristics of 'normal' SEs 28

'Shelf' SEs 32

Conclusions 33

3 – Results of case studies 35

Company profiles and contexts of SE creation 35

Does SE creation weaken codetermination? 36

Employee involvement in establishing SEs 43

Employee involvement through SE works councils 47

Composition of SE works council and voting rules 47

Chair and select committee 49

Frequency of meetings 49

Working facilities and training 49

Presence of experts and union officials 50

General information and consultation rights 51

Consultation under 'exceptional circumstances' 52

Towards negotiation rights? 54

Comparison with previous EWCs 54

Employee representation at board level 57

Conclusions 65

Bibliography 69

Annex: Inventory of SEs (at 1 June 2010) 78

Executive summary

Introduction

A European Company (Societas Europaea – SE) operates on a Europe-wide basis and is governed by European Union law. The European Company Statute (ECS) Regulation (2157/2001) and Council Directive 2001/86/EC stipulate that negotiations must take place on employee involvement in the formation of an SE. Both the regulation and the directive were adopted on 8 October 2001 and were to be implemented in the Member States by 8 October 2004. An EU-based company may become an SE in four ways (the first three involve more than one company): merger; creation of a joint holding company; creation of a subsidiary; or when a single EU-based company is transformed into an SE, provided it has had a subsidiary governed by the law of another Member State for at least two years. Employee involvement is defined by the directive as 'any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company'. Employee involvement, including participation rights at board level, is the focus of this research report.

Policy context

In view of the upsurge in the number of SEs created in recent years, there has been considerable debate on how the SE directive might affect national industrial relations and existing frameworks of employee involvement. Employers have raised concerns that countries with strong codetermination rights may become less attractive for SEs, while employee representatives and trade unions worry that these very codetermination rights may be watered down by transforming an existing company into a SE. In September 2008 the European Commission published a document entitled *Communication from the Commission on the Review of Council Directive 2001/86/EC of 8 October 2001*. An important message of this communication is that it is too early to make a full assessment of the SE directive. It said: 'the vast majority of Member States and the European social partners consider that, for the time being, the Directive does not require amendment or clarification. Given the virtual lack of experiences in applying the national provisions transposing the Directive, more time is needed before it can be established whether amendments are necessary.'

Key findings

By June 2010, about 588 SEs had been established. Only around one quarter (145) were carrying out 'real' economic activities with employees ('normal SEs'). This implies that the vast majority of SEs created to date are not actively doing business employing people. Many of the SEs (78) are so-called 'shelf' companies that are for sale, with most of them in the Czech Republic (43), or 'empty' SEs (82) that do not yet have any employees. For many SEs (around 283), no information is available at all (these SEs are known as 'UFOs'). This diverse picture of different types of SEs is also replicated with regard to geographical coverage: in eight Member States (Bulgaria, Finland, Greece, Italy, Lithuania, Malta, Romania and Slovenia) no SEs have yet been registered. The distribution of 'normal' SEs is also very unequal; Germany has by far the most 'normal' SEs (73), while the Czech Republic has 20. Around 45% of normal SEs were established by the conversion of an existing company, while about 25% resulted from mergers. Only a comparatively small number were established as holding companies or as subsidiaries. Half of all normal SEs have fewer than 500 employees.

The case studies show that generally an SE is used by the company to streamline and create leaner company structures in an international environment. For management, the agreement on employee involvement is a necessary precondition for the creation of the SE. It helps to create a European company identity. For the employees, the agreement on employee involvement meant that codetermination rights in the supervisory board were secured or even improved, and important rights were obtained for the SE

works council. Employee involvement in the SE is not seen by the companies concerned as something 'arbitrary' but as an integral part of corporate governance in the EU.

Most of the SE agreements repeat the information rights contained in the standard rules. Some add other specific items. In many agreements these are limited to 'cross-border' matters, generally defined as matters concerning more than one country. All SE agreements contain supplementary consultation rights in 'exceptional circumstances'. As for the period during which the information rights must be extended, the agreements often use a formula inspired by the recast European Works Council (EWC) Directive (Directive 94/45/EC) – that is, 'in due course'.[1] Most of the employee representatives surveyed for this report stressed the added value of a European Company works council for the access to strategic information and central management. In some cases, the 'employee advocate' role of SE works councils goes beyond the one described in the SE agreements: the SE works council in these cases acts on behalf of those whose ability to defend their interests is weak or non-existent.

Employee participation at board level was an important aspect of the negotiations regarding employee involvement in all 10 cases analysed for this report. Company-specific traditions and requirements were respected. In many cases, employee participation at board level was adjusted according to new needs. No company switched from a two-tier to a single-tier system of corporate governance. There was no weakening of codetermination rights, although the nomination of board-level representatives by trade unions was not always straightforward.

The active involvement of trade unions (at both national and EU level) was an important source of support for company employee representatives. Involvement of EU-level trade unions favoured the 'Europeanisation' of interest representation. The negotiation of employee involvement in SEs creates an opportunity for an EU level of interest representation that supports the development of a European identity as well as 'European mandates' (by which is meant the evolution of a level of interest representation and articulation of employee interests, shaped more by European than national interests). The negotiations on employee involvement in SEs led to agreements and actions that are regarded as positive by actors on both sides.

Policy pointers

The present influence of SEs on the 'Europeanisation' of industrial relations should not be overestimated. Yet in the long run SEs could turn out to be a factor in the emergence of supranational, enterprise-specific industrial relations, which are different from the industrial relations systems in the respective national industrial relations environments.

There are indications that in some cases the new legal form of an SE may have been used to circumvent existing national regulations for employee participation rights. Yet the analyses of 10 company cases in this report demonstrate that employee involvement is widely regarded as an integral part of corporate governance in the EU.

The inventory of existing SEs that was carried out for this report indicates that 'shelf' and 'empty' SEs have developed into a significant group of existing European companies. What is worrying about this type of SE is that the directive does not provide for any action in terms of employee involvement in cases where an 'empty' or 'shelf' SE is turned into a normal one. Whether or not this may result in a

[1] For more on the recasting of the directive, see http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeanworkscouncils.htm

concrete need to adjust the 'before and after' principle of the directive is an important point of debate amongst European social partners and experts (see below).

Against the background of restricted resources and limited personnel, initiatives such as the founding of the European Worker Participation Competence Centre (EWPCC – a part of the European Trade Union Institute, ETUI) appear particularly valuable. It could be helpful if this employee-initiated, forward-looking centre was supplemented by a similar institution representing and providing support for employers.

Introduction

The European Company Statute, commonly known by its Latin name of *Societas Europaea* or SE, is based on the Council Regulation on the Statute for a European Company (2157/2001/EC) and on the Directive supplementing the Statute for a European Company with regard to the involvement of employees (2001/86/EC). It is one of the most important pieces of company legislation published so far by the European Union. Adopted in 2001, it has since October 2004 made it possible for companies operating in more than one EU Member State to reorganise their cross-border business under a single European label. This enables them to work under the umbrella of a single legal framework, thereby reducing the internal costs of operating in several countries. This intention of harmonising company legislation across the EU Member States lies behind not only the SE directive but also a number of additional directives aimed at integrating the legislation governing European corporate practice. By 2010, 12 such directives had come into force.

The SE directive is more than just a general regulation governing the internal functions of a business operating in two or more European countries at once. It is also an attempt to develop an appropriate concept for corporate governance and to combine this concept with the broad objective of the European social model, based on well-developed and well-functioning industrial relations giving workers a significant influence over company decisions.

For this reason, information, consultation and participation of workers are crucial to the SE legislation. A European Company may only be registered if an agreement for 'employee involvement' pursuant to Article 4 of Directive 2001/86/EC has been reached. The introduction of mechanisms that ensure worker information, consultation and participation (where applicable), as foreseen by the directive, is therefore an integral part of the European Company. The directive defines involvement of employees as 'any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company' (Art. 2). This was the first time a piece of EU legislation defined 'participation' as 'the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of participating in the establishing of an SE'.

This aspect of obligatory worker involvement at European level, in particular by including for the first time participation rights at company-board level, is the focus of this report. The report is based on a project for the European Foundation for the Improvement of Living and Working Conditions (Eurofound), which aimed to gather information on the practical experience of the functioning of European Companies, with a particular focus on the issue of employee involvement.

The research was carried out by a multinational research team coordinated by Wilke, Maack and Partner and the Institut de Recherches Économiques et Sociales in Paris.[2] It is related to Eurofound's 2009 work programme, which aimed 'to build up a first inventory, analysis and case studies of the nature and functioning of employee involvement in SEs and capture experience in companies, looking at both management and employees'.

Through this report, Eurofound is also contributing to the current European debate on how the European Company Statute works in practice. More specifically, the SE regulation requires the European Commission to report on its practical application five years after its entry into force and to put forward amendments where appropriate. This process of evaluating the implementation of the SE regulation, and carrying out a public consultation on any need for revision, was initiated by the

[2] Apart from senior and junior research staff at the two consortium partners, the research team consisted of Melinda Kelemen (UK and Hungary), Valeria Pulignano (Belgium), Volker Telljohann (Italy), László Neumann (Hungary) and Lionel Fulton (UK).

EU Commission in early 2010. It was accompanied by an external study (Ernst & Young, 2009) and complemented by a high-level conference at the end of May 2010.

This report has been discussed and enriched at two expert meetings organised by Eurofound in order to evaluate interim and pre-final results: initial results of the research were discussed at an initial expert workshop in December 2009 in Vienna, and the pre-final version of the report was presented at a second expert meeting held in Brussels at the beginning of June 2010.

Research objectives

The focus of the research and this report is on how the involvement of workers in the European Company is achieved. The general objective was to map, analyse and assess the three forms of employee involvement included in the directive: information, consultation and participation.

This broad objective has been broken down into three distinct research tasks carried out in the context of the research:

- a brief analysis of the European Company Statute, the related directive and its provision on employee involvement; this took the form of a literature review of both academic and policy documents as well as an examination of the positions of social partners and key political actors in Europe on the European Company Statute and its impact on labour relations;
- an evaluation and inventory of existing SEs with a focus on 'normal' (that is, operationally active) European Companies and their founding agreements – in particular, their provisions regarding employee involvement; this task was undertaken in close cooperation with researchers at the ETUI in Brussels who are involved in the workers' participation resource centre, and in particular the SEEurope research network;
- 10 company-level case studies looking in detail at the implementation of information, consultation and participation of employees.

Methodology

Literature review

Though the SE directive has been in effect for only half a decade, it has generated a wealth of research and debate – in particular, around the issue of employee involvement in the European Company. This report is based on a stocktaking of existing knowledge, focusing on the issue of employee involvement, as well on the positions and orientations of EU-level actors towards the SE directive. Regarding the latter, the focus of this work is on the debate between social partners at the EU level on the future of the directive – namely, how its implementation will be assessed, whether or not there is a need for adjustments, etc. This report also summarises the basic demands and positions of EU-level actors on the public consultation initiated by the EU Commission reviewing the directive.

Inventory of existing SEs

In the context of this research project an overview and inventory of all registered SEs was prepared in cooperation with the ETUI's European Company Database (ECDB), which is the major and so far only reliable source of this kind of information.[3]

[3] The official platform for announcing SE company registrations is the Supplement to the *Official Journal of the EU* (TED). However, as described in Chapter 2 of this report, the ECDB provides more reliable data and details on SE companies.

Company case studies

A major source of data for this report is case study fieldwork in 10 companies. Apart from the requirement that they be normal SEs (European Companies that actually operate with employees), the main selection criteria for the case studies were the relevance of the particular company in terms of the project target and assumptions, a broad European coverage of its workforce, a broad mix of different countries of origin/SE registration as well as the size and number of branches of the SE.[4] Finally, the sample includes European companies that provide both types of employee involvement (information and consultation rights together with board-level representation, and companies providing only information and consultation rights).

Table 1: Case study coverage

Company	Country of origin	Sector
Allianz	Germany	Financial services
BASF	Germany	Chemicals
Elcoteq	Luxembourg	Electronics
Equens	Netherlands	Financial services
Fresenius	Germany	Chemicals
GfK	Germany	Services
Hager	Germany	Metal
MAN	Germany	Metals
SCOR	France	Insurance
STRABAG	Austria	Construction

In light of the debate on the possible negative effects of SE formation on employee involvement at national level, and in particular whether SE formation waters down or undermines codetermination rights etc., it must be stressed that the case studies in this report in general reflect good-practice cases. In any event, negative experience with employee involvement was not a selection criterion of the fieldwork.

The case studies were carried out mostly between January and May 2010; they focus in particular on the following issues:

- the negotiation process of the SE agreement;
- the experience of the representation body (SE works council);
- the experience of board-level participation.

The case studies are based on qualitative empirical instruments – in particular, interview questionnaires. Key actors were interviewed to obtain information on the background of each case and the interests and expectations of the actors involved, and to enable the researchers to make an assessment of the documents on the SE and the results of negotiations on employee involvement. The interview partners differed from case to case, depending on the structure of the company and the nature of employee representation. However, interviews were generally carried out with management representatives and representatives of the SE works councils, as well as with employee representatives on company boards.[5]

[4] It should be noted here of course that a large majority of 'normal' SEs have been registered in Germany and that the group of German companies is therefore most prominent.

[5] Only at BASF were no interviews with management representatives conducted.

Structure of report

The report starts with a review of the literature and research on the European Company, which is presented in Chapter 1. Chapter 2 comprises an overview of existing SEs. It provides a statistical evaluation of SEs in terms of the different aspects of employee involvement, with the special focus on 'normal' SEs. This inventory presents the situation as of 1 May 2010. There is also a table listing key details of the various kinds of SEs in the annex to this report.

The inventory of normal SEs in Chapter 2 should be read in conjunction with the case study reports. The major (pre-final) results of this in-depth analysis of the implementation and experience of employee involvement in 10 European companies are presented in Chapter 3.

Finally, Chapter 4 draws some general conclusions, in particular with regard to the major research questions underlying the analysis.

Review of literature and policy debate 1

The European Company and industrial relations research

Introduction

Although the legal form of an SE company was only introduced in 2001, there is already a wealth of literature on the European Company Statute, the related directive and their provisions on workers' involvement.

It took nearly a third of a century of sometimes tortuous negotiations before a common European legal form for companies came into being in late 2001 (Keller, 2002). After various phases and initiatives that have been widely analysed and documented (see, for instance, Köstler and Büggel, 2003; Gold and Schwimbersky, 2008), a fairly complicated, highly formalised political compromise was reached. The resulting legislation consists of two parts: the Council Regulation on the Statute for a European Company (2157/2001/EC) and the Directive supplementing the Statute for a European Company with regard to the involvement of employees (2001/86/EC), which both came into force in 2004. It is not necessary to describe in detail here the protracted history of the SE and the final compromise reached based on the suggestions of the Davignon Group[6] (Group of Experts 1997, see also Keller 2002), since both the political (Gold and Schwimbersky, 2008; Stollt, 2006; Theisen and Wenz, 2005; Weiss, 2002; Rehfeldt 2006) and juridical aspects (Nagel et al., 2009; Köstler, 2006; Van Gerven and Storm, 2008) are covered widely in the literature. There is consensus among researchers that the SE directive provides an additional, transnational level of rights that leaves all existing national forms untouched. It facilitates a unified management and reporting system instead of forcing companies to operate under substantially differing national laws and provisions (Keller and Werner, 2008a). It should be noted here, however, that the route finally chosen for the European Company was a compromise between the distinct national traditions of company law and corporate governance and the creation of a supranational level of legal regulation with regard to company organisation, corporate governance and employee involvement (see Köstler and Büggel, 2003).

Framework of employee involvement in the European Company

The evolution of the framework and regulation of employee involvement has been a major focus of industrial relations and legal research and analysis on the European Company. The first memorandum and draft proposal for a European Company was published by the European Commission in 1966. The first formal preliminary draft for an SE Council Regulation was introduced in 1970 (OJ C 124, 10.10. 1970). This draft included three types of employee involvement:

- European works councils (EWCs);
- employee representation on supervisory boards;
- collective agreements.

This model was heavily influenced by German company law (which specified an obligatory two-tier model). The problem was that national legislation in many countries did not allow (or permitted only to a minimal extent) board-level representation on either a one-tier or a two-tier board. These countries were reluctant to adopt an unknown practice into their industrial relations systems (Gold and Schwimbersky, 2008). By 1975, this proposal had been completely revised (COM 75/150). The most significant change was a suggestion for one-third parity (one-third of board members being appointed by the shareholders, one-third by employees and one-third jointly). The Dutch rejected this

[6] The Davignon Group is a high-level expert group on workers' participation and involvement that was set up by the EU in 1996 to help facilitate progress towards the European Company Statute, which had been stalled for many years.

proposal, arguing that it was still 'too much inspired' by the German model, and preferred a more flexible approach (such as the UK model, for instance). Meanwhile, Germany was still insistent on its system, known as *Mitbestimmung*, generally translated as 'codetermination' (Gold, Nikolopoulos and Kluge, 2009). A third proposal was introduced in 1989 (OJ C 263, 16.10.1989). The idea of a single obligatory participation system was dropped and the Commission split the ECS into a regulation and a directive. The directive allowed four different systems of board-level representation (the so-called 'German', 'Scandinavian', 'French' and 'Dutch' models). This resulted in a revised proposal, allowing the choice between one-tier and two-tier systems (OJ C 176, 8.07.1991, OJ C 138, 29.05.1991). The Luxembourg Presidency of the Council introduced a revised proposal in 1997, based on the suggestions of the Davignon Group. Its report argued that the national systems of employee involvement are too diverse and proposed that a system of participation should be determined by negotiations between management and employee representatives, except when the parties are unable to reach an agreement. This is when the 'before and after' principle was born. This principle ensures that existing worker participation rights cannot be eroded by an enterprise converting into a European Company. It also means that the management of an SE is not obligated to introduce employee involvement where no such provision has existed before under national law – as in Spain and the United Kingdom, for instance (both countries having been granted an opt-out by the Council (Gold and Schwimbersky, 2008)).

The directive supplementing the European Company Statute is not the only EU legislation on employee involvement. The regulation is based on the experience of both the Directive 94/45/EC on European Works Councils, which was revised in 2008, and the framework Directive 2002/14/EC on general workers' information and consultation in Europe. Provisions on the involvement of employees in company decision-making also came from the 10th Directive on cross-border mergers of limited liability companies and from Directive 2003/72/EC on the European Cooperative Society (Gold, Nikolopoulos and Kluge, 2009).

Dynamics of SE establishment and their impact on employee involvement

An SE may be established in four different ways, according to the European Company Statute:

- by merger (of two or more existing public limited liability companies);
- as a holding company (by two or more existing public or private limited liability companies)
- as a subsidiary (by two or more companies);
- by transformation (conversion of an existing public limited liability company) (European Company Statute Art 15–39).

In principle, SEs must have subsidiaries in more than one Member State of the European Economic Area (EEA). The company's registered head office must be located in one of the Member States. However, it can be transferred from one Member State to another at any time once an SE has been created (see Gold, Nikolopoulos and Kluge, 2009). Furthermore, each path of foundation can have specific implications for employee involvement (for details see Köstler, 2006, p. 16ff).

The existing research shows that the decision to establish an SE is made exclusively by the company's management and shareholders/owners and cannot be influenced by its employees or their representative bodies (Patra, 2006). This is an important difference compared with the directive on EWCs: here, employees play a more active role, being able to request the formation of an EWC whenever they wish, as long as the preconditions are fulfilled. Moreover, they can have as much preparation time

as they want before the official process is initiated. In the case of an SE, however, employees play a more or less reactive role, with certain time constraints. Once the decision to establish an SE is made, the company's governing body usually sets up so-called 'terms of foundation' which explain the legal and financial aspects of the foundation as well as its implications for the shareholders and employees. Furthermore, the legal form of the company and details of the procedures for the negotiations on employee involvement must be stated.

The terms of foundation also depend on the SE's administrative and management structure (ECS Art 38-51). Two alternative systems are legally possible:

- the so-called one-tier or monistic system with an 'administrative organ' as the only governing body;
- the so-called two-tier or dualistic system with two different organs: a management board and a supervisory board.

The choice of system is up to the company's owners and management and, again, cannot be directly influenced by the employees. This decision is already made before the negotiations about employee involvement are officially initiated. It must be emphasised that this new legal form provides the option to establish a one-tier system in a country that has so far only allowed two-tier systems (or vice versa). This option seems to be important for the attractiveness of SEs, at least for companies with certain characteristics (see Keller and Werner, 2008a).

The particular form of establishment has a major impact on the form and content of employee involvement (Patra, 2006). For instance the so-called 'standard rules' (Article 7 of the directive) apply only in some cases that are connected with the form of establishment of the single SE. (These rules are minimum standards of employee involvement that are applicable if the negotiating parties cannot reach an agreement on employee involvement at all or within the six-month deadline.)

According to the directive, arrangements for employee involvement are obligatory every time an SE is established. These arrangements should be agreed in negotiations between the management and employee representatives in a specially set up special negotiating body (SNB).

Defining information, consultation and participation

The directive uses the definition of employee involvement given by the Davignon Group, which is rather broad. According to the directive (Art. 2h-k), 'involvement' means 'any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company'. Information means giving information rights to the employees' representatives on issues that concern the SE or its subsidiaries. Consultation should be ensured through a representative body (such as the SE works council) where the employees have the opportunity – on the basis of information provided – to express their opinion on planned measures to be taken by SE management. Participation (or board-level representation) means the right to elect or appoint employee members to the SE supervisory body in the case of a two-tier corporate governance system or the administrative organ in the case of a one-tier corporate governance system.

Negotiation on employee involvement in an SE must start as soon as possible after the initiative is taken to convert the company into an SE. Negotiations should not last longer than six months (in the

case of EWCs up to three years are allowed). If the negotiations fail, the standard rules apply. These standard rules are transposed by national legislation. The SNB can decide not to open negotiations, or to terminate negotiations that have already commenced. In this case, the double two-thirds majority is also needed.[7] In principle, the SE does not interfere with national information or consultation rights, but only creates an 'additional' level of rights. National information and consultation rights can be affected in only two ways:

- when a newly founded holding SE is being set up over existing subsidiaries;
- when a national public limited company is established by way of the transformation option (Stollt, 2006).

Explaining quantitative differences in SE formation

As the regularly updated figures of the database on European Companies at the ETUI show (see Chapter 2 of this report), the headquarters of those SEs that have been established so far are spread quite unevenly amongst European countries. SEs are concentrated in a few countries, specifically Germany and the Czech Republic. There is a striking concentration of 'normal' SEs in Germany and a concentration of so-called 'shelf' SEs in the Czech Republic. By contrast, there are no SEs in Bulgaria, Finland, Greece, Italy, Lithuania, Malta, Romania or Slovenia.

Only a few research papers have addressed this issue and tried to explain the variety and diversity of SE landscapes in Europe (e.g. Koukiadaki, 2009 on the UK; Hojnik, 2009 on Slovenia; Koutroukis, 2009 on Greece). There are also few analyses that focus on the national framework conditions and contexts in order to explain the dynamics of SE development in the country concerned (Ernst & Young, 2009).

With regard to the future dynamics of SE development, there are two general and quite opposing predictions: one foresees a significant rise in the number of SEs, the other only a limited number of new foundations. Among the factors that favour the second scenario is the fact that alternative strategies for transnational mergers and acquisitions of companies will be available by legal action. These strategies are the Directive on the cross-border merger of limited liability companies (2005/56/EC) and the Directive on cross-border transfers of registered office of limited liability companies, currently at the discussion stage.

A study on the operation and impact of the European Company Statute carried out on behalf of the European Commission during 2008 and 2009 also draws conclusions on the link between the quantitative dynamics of SE creation and the regulation of employee involvement, in particular participation at board level.

According to the study (Ernst & Young, 2009), employee involvement as defined in the SE directive in general is regarded as a factor hindering SE creation throughout Europe. While the study comprehensively analyses different 'positive' and 'negative' driving factors for SE creation in each EU country, employee involvement (and sometimes even 'extensive' employee involvement) is mentioned in all country profiles as a 'negative' driving force.

The study also argues that the significant differences in the number of SEs established so far in the EU Member States could be explained by the rules regarding employee involvement and in particular the participation of employees at board level. The authors of the study believe that the high number of

[7] A double two-thirds majority is a two-thirds majority of the SE works council as well as a two-thirds majority of the entire workforce.

SEs created in Germany, for example, can be explained by 'extensive' employee participation rights that currently exist in the context of codetermination legislation and the attempt of companies to circumvent this with the SE. By contrast, the low number of SEs so far established in southern Europe, for example, is explained by the authors in terms of the complexity of organising employee involvement in an SE. The authors also suggest that the low numbers of SEs in some countries reflect the fact that the entire concept of 'workers' participation' is somewhat alien to the industrial relations cultures in these countries. This assertion is puzzling considering that exactly this idea of participation is clearly part of the majority of EU Member States' industrial relations systems.

Regardless of the analytical problems with the conclusions the study draws (the lack of any serious empirical or case study-based analyses, aggregation of data and lack of the necessary differentiation of company size and other methodological problems – ETUI, 2010), there are – at least from the German perspective – a number of empirical research results that show that these conclusions are oversimplified and incorrect. Recent research evidence from the Hans Böckler Foundation, for example, shows that amongst the German 'normal' SEs, the use of SEs to circumvent or weaken employee participation rights is clearly the exception. Most of the normal SEs in Germany had no workers' participation rights before the formation of the SE. And in those cases where these rights existed before SE formation, they were maintained or even extended after the formation. Apart from this, the investigation of large companies with equal participation rights of employees at board level shows that in only a minority of these cases was the size of the board (and thereby the number of employee representatives) reduced; in most cases its size was maintained (Hans Böckler Foundation, 2010).

Empirical work on employee involvement and participation in SEs

Considering the large proportion of registered SEs in Germany, it is not surprising that many empirical surveys and research have been carried out in this country. Among them are the studies of Bayer and Schmidt (2007, 2008), Eidenmüller, Engert and Hornuf (2008), as well as Gold and Schwimbersky (2008) for an analysis of the different types of SEs.

A recent comprehensive analysis of established (normal) SEs was completed by Keller and Werner (2008a). The study looks in detail at the election procedures, the SNB and the mechanisms for employee information and consultation and board-level representation of established SEs. Though the authors describe a fear (in particular from the German perspective) that SEs might lead to a reduction in participation rights (the 'freezing' of codetermination), the opposite has proved to be true. The authors also argue that the practical impact of the SE on the development of the 'European social model' and on European industrial relations 'should not be overestimated'. They point out that the original intention of creating a Single Market might turn out to have the opposite effect. As the authors have highlighted in another article (Keller and Werner, 2008b), it is important to note that all SE agreements are tailor-made and enterprise-specific. As mentioned earlier, they are the result of free negotiations in full 'autonomy of the parties'. In other words, no agreement is exactly like another: they are instead heterogeneous and follow the principle of subsidiarity.[8]

Representation bodies and SE works councils

As empirical and case study-based research shows, in companies with an existing EWC, the SNB often mirrors the composition of the EWC. Exchange of information and cooperation are, of course,

[8] The best source for company case studies is the researcher network on the European Company (SEEurope network) coordinated by the ETUI, which has produced case studies of Plansee SE (Schwimbersky and Rehfeldt, 2006), Elcoteq SE (Stenstrand, Bruun and Neumann, 2007), Strabag SE (Klambauer, 2008) and MAN Diesel SE (Knudsen, Müller and Rehfeldt, 2008). Most of these cases are positive examples of how workers utilise the opportunities offered by the directive.

easier to achieve if the members of the SNB already know each other from their interaction within the EWC. The expertise of such experienced SNB members seems to be greater than in cases without a former institutionalised body representing employees' interests. Some SNB members, especially the chairperson and representatives from countries with many employees, exert a strong informal influence because they keep in touch between the formal meetings and often also consult informally with management (Keller and Werner, 2008a). In some larger SEs, with SNBs of 30 or even more members, smaller negotiation committees are formed to negotiate on behalf of the SNB. The SNB can hire external experts, as well as representatives from national trade unions or the European industry federations. All costs must be paid by the company. Furthermore, the national laws implementing the directive can include the provision that trade union representatives may also be full members of the SNB, even if they are not employees of the company. Compared with the SNB known from the 'article 6 phase' of EWCs, some improvements from an employees' point of view have indeed taken place (Keller and Werner, 2007).

An analysis of the negotiations in the first cases of SE formation demonstrates that good preparation of the SNB members is crucial for achieving a positive outcome. This is particularly important when employees from a large number of countries are involved. The trade union representatives on the SNB, particularly those appointed by a European industry federation (EIF), play an important role. They provide information about the various traditions in advance, thus contributing towards a balance of national interests. Research on EWCs indicates that processes of internal bargaining are likely to take place between representatives from different countries and/or plants. This is also true for SEs. Conflicts and problems within the SNB that could weaken its negotiating position have to be solved, and common positions have to be established prior to the actual negotiations. Again, trade union experts often played a crucial role in the cases analysed.

As explained above, there is no precise legal provision for the scope and contents of employee involvement. An agreement between the SNB and company management can be reached in full 'autonomy of the parties' as long as the 'before-and-after' principle is respected. Article 4 of the directive only specifies the topics an agreement may contain. They include 'the scope of the agreement; the composition, number of members and allocation of seats on the representative body; the functions and the procedure for the information and consultation of the representative body; the frequency of [its] meetings [and its] financial and material resources'. This 'representative body' that is responsible for information and consultation of the employees is usually called the 'SE works council'. The parties can decide on an 'arrangement of participation' in the governing bodies of the SE – especially in the supervisory board (two-tier system) or administrative board (one-tier system). This is the level to address 'problems of overall strategic decision-making and control or supervision of boards' (Keller, 2002, p. 425). For this reason, the negotiations usually refer to two levels of employee involvement: information and consultation in the SE works council, and board-level participation.

Board-level representation

Existing analysis illustrates that there are monistic as well as dualistic forms of corporate governance at national level (see Group of Experts, 1997; Fulton, 2008; Kluge and Stollt, 2006 for details). So-called 'one-tier systems' have an administrative board (or board of directors) only, whereas so-called 'two-tier systems' consist of a management board and a supervisory board that controls and monitors the former.

The majority of EU Member States (18 out of the 27) provide in their legislation for some kind of employee representation at board level (Kluge and Stollt, 2007). There are, however, significant

differences between countries in qualitative as well as quantitative terms. In fact, gaps between countries in this area are even wider than in the case of employee involvement, described above. In the vast majority of cases, management has opted for the governance structure that prevails in the country of registration (Schwimbersky and Rehfeldt, 2006). This comes as no surprise because one would expect a certain, possibly even high, degree of organisational continuity (or 'path dependency') (for the UK, see Villiers, 2006). Interesting cases from the industrial relations point of view are those SEs that have used the European Company statute as a vehicle to change their structure from the two-tier to the one-tier system. This transformation of corporate governance was not legally possible in their country of registration beforehand. Especially for Germany, this change is quite remarkable: the majority of the German SEs (in absolute numbers, regardless of their size) have a one-tier structure. As to the reasons for this, there seem to be two groups of SEs. One group has parent companies that have their seat in a country where the one-tier model is normal; these SEs use this model common in the country of their parent company regardless of the fact that the two-tier model is the standard in the country where the SE is now registered. The other group is made up of SEs managed by their owners. In these cases the majority (or even all) of the shareowners are actively involved in running the SE and do not see any necessity for control by a supervisory board, especially not a codetermined one. Indeed, in none of the German one-tier SEs does the agreement include participation at board level.

Does the SE directive erode codetermination rights?

In view of the growing number of SE establishments, there has been a political debate – in Germany in particular – about major changes to existing laws on codetermination because of the introduction of SE. Some critics have argued that countries with extended forms of employee involvement would suffer from this legislation and would be less attractive for the formation of SEs (Werder 2004).

The so-called 'before and after' principle has also raised concerns about the erosion of employee participation rights. According to this principle, the rights of employee involvement that existed in at least one of the companies establishing an SE must be preserved in the SE (Article 4(4) of the directive for the case of establishment through a conversion). This regulation only states that existing structures of employee involvement must be protected. In cases where only companies from Member States without provisions for board-level participation are concerned (such as Italy and the UK), there will be no obligation for employee representation on the board of the SE, unless otherwise agreed.

Existing research – from Germany in particular – on the correlation between SE formation and existing national frameworks of employee participation and codetermination reaches divergent conclusions. Some authors have argued that national rules on mandatory worker codetermination in the supervisory board significantly increase the number of SEs in a Member State and from this one can draw the conclusion that the European Company provides an opportunity to mitigate or even escape from national worker codetermination (Eidenmüller, Engert and Hornuf, 2009a). Other researchers have, however, questioned this conclusion by stressing that in Germany only a very small number of companies have decided to transform themselves into SEs in order to avoid codetermination rights. Researchers such as Köstler highlight that only a minority of existing SEs in Germany were public listed companies and/or characterised by employee participation at board level *before* the SE creation (Hans Böckler Foundation, 2010). At the same time, the analysis of normal operating SEs shows that in those cases where employee participation rights (either on an equal or minority basis) existed before the creation of the SE, this right was also guaranteed after the transformation into a European Company. The thesis that German companies in particular that are close to the threshold for employee participation at board level (500 employees) or equal participation rights (2,000 employees) are making use of the SE in order to circumvent or limit employee participation by transformation into an SE is not confirmed by

empirical facts, as analyses of German SEs show (Hans Böckler Foundation, 2010). Company-based analyses indicate that this motive has been a driving force in only a very limited number of cases so far.

Harmonisation versus diversity of industrial relations

According to the overwhelming opinion of the research community, the SE directive will not trigger a more unitary model of employee involvement and participation in Europe. In fact, the opposite seems to be the case: the basic rationale of the SE directive and its regulation of employee participation is not about any kind of European 'harmonisation' but about the preservation of nationally institutionalised rules and standards.

Based on empirical research results it seems likely that future forms will vary substantially not only between but also within Member States and, even more markedly, from one company and SE to the next. First of all, existing national regulations differ significantly and will exert a major impact at supranational level. The dominance of established national 'customs and practices' during the phase of transposition will even strengthen this trend (for the specific case of the UK see Villiers, 2006). These processes are highly politicised and subject to lobbying activities by national social partners, especially in cases of strong disagreement, with national governments having ample room for political manoeuvre (Keller, 2002).

Furthermore, all agreements concluded within the SEs are enterprise-specific and tailor-made because they are the results of free negotiations between central management and the SNB. In other words, they are based on the primacy of the principle of subsidiarity and on rather heterogeneous negotiations, rather than relatively homogeneous legislation.

Any kind of 'upward harmonisation' of widely differing national rules constituted an ambitious political goal but proved to be a model of social regulation during the 1970s. But as in other policy fields, it has proved a less realistic concept for integration policies in the field of industrial relations since the 1980s (Kaar, 2006). In the case of worker participation, it proved unrealisable because political consensus in the form of unanimity was needed and could not be reached in the Council of Ministers. For this reason, harmonisation was substituted with more realistic, 'flexible' concepts. 'The Directive does not aim to introduce new or additional aspects of employee involvement but rather it seeks to prevent the disappearance or reduction of what already existed prior to the establishment of an SE' (Villiers, 2006, p. 187).

Thus, the obvious trends towards wide-ranging, 'flexible' forms instead of unitary ones, and 'voluntaristic' instead of binding forms, which were initiated by the EWC directive in the early 1990s, were strengthened. Whether, despite this renunciation of harmonisation, tendencies towards convergence can be observed in practice, is a matter of empirical investigation. The direct result of SE legislation is an increase in the existing diversity and fragmentation, because it is implemented in different ways in individual SEs.

Last but not least, the SE directive is an integral part of the fundamental change from substantive to procedural regulation. In other words, current legal regulation is restricted mainly to procedure and processes, whereas older regulations also included more or less detailed rules of substance. In the SE directive, except for the rights protected by the 'before-and-after' principle, only procedures have been regulated, whereas all issues of substance and content of employee involvement are freely negotiable.

The question of convergence is different from that of the expected contribution of the SE directive to the 'Europeanisation' of industrial relations. The SE directive constitutes another example of what

has been labelled 'negotiated Europeanisation' in the analysis of EWCs (Lecher et al., 2002). Even if this now-dominant principle of regulation leaves responsibility for the results with the private actors rather than the public ones, such as the Commission, in the case of EWCs its outcome is a certain degree of Europeanisation of industrial relations. It has contributed to the Europeanisation of the industrial relations actors and their strategies (Hoffmann et al., 2002). Together with the development of collective bargaining and social dialogue at the sectoral and intersectoral level, it can be seen as a building block for a European system of industrial relations. The Europeanisation of industrial relations does not necessarily mean that there will be a convergence or homogenisation of these industrial relations. In the case of EWCs, it has resulted in a certain fragmentation of employee representation, as only the employees of a few big multinational firms benefit from a supplementary transnational level of representation and information-consultation rights. As they are based on voluntary agreements, the form and content of these rights differ from one company to another. But, on the other hand, the unions and particularly the industry federations were involved in this process. They tried to coordinate the employees' interests and to make sure that certain common features emerged, despite the fact that the practice of the EWCs is still very divergent – ranging from purely 'symbolic' EWCs to EWCs that go beyond consultation and are beginning to negotiate with management. The SE directive now introduces a new level of differentiation with the possibility of Europeanisation of participation rights. As in the case of EWCs, it is necessary to analyse how these new forms fit into the emerging European system of industrial relations and how they are articulated with the existing national industrial relations systems.

Research gaps

A review of the existing empirical research indicates that the influence of SEs on the development of the 'European Social Model' in general and of European industrial relations in particular should not be overestimated. In the long run, SEs could turn out be a factor in the emergence of supranational *enterprise-specific* industrial relations, setting them apart from national systems, especially from collective bargaining at sectoral level as it exists in the majority of western European countries. In this way it could contribute to new forms of transnational or supranational 'enterprise syndicalism'. Such a development would increase the present degree of fragmentation and turn the original idea of establishing a unified legal form by means of the SE into its opposite.

From the existing literature three research gaps can be identified.

Firstly, the SE directive is introducing 'employee participation' for the first time in European industrial relations regulation; here, case-study based research should analyse the impacts that this will have – in particular, in national environments that do not have this type of 'participation culture' in their industrial relations framework.

Secondly, there is a wealth of research on the EWC directive and its implementation at national and company level (for an overview see Eurofound, 2008) and on the differences with regard to employee participation, information and consultation rights in the SE directive; however, research is needed on the practical impact and effect of these differences in regulation, in particular in 'exceptional circumstances' such as restructuring situations. The SE leg provides for the possibility of 'EWCplus': better information and consultation rights because of better legal provisions, a better negotiating position when the SE is created, plus participation in boardrooms where applicable.

Third and finally, as various researchers have stressed (such as Stollt, 2006), a weakness of the SE directive is a lack of provision for employee involvement in certain situations, such as where changes take place after the SE has been established. Here, also, empirical surveys and case-study based

research is needed. Though some researchers have started to address this topic (Kelemen, 2009; Hojnik, 2009), there is a research gap concerning the character and rationale of SEs without employees, as well as the economic and other framework conditions of setting up these types of SEs, particularly in the new Member States. This also includes the question of what happens in terms of employee participation if an 'empty' SE is activated.

The directive on employee participation in the light of EU-level debates

Introduction

The rights of workers to be involved in decision-making within their place of employment, through information and consultation arrangements, has become an accepted part of the employment relationships agenda in most EU Member States and is reinforced by the adoption of general framework directives, such as the Directive on the participation of employees in European Companies (2001/86/EC).

Although the SE directive constitutes an important and historic achievement in respect of the stated goals of the European Social Model on workers' participation, some inconsistency remains. There seems to be a continuing imbalance between the economic aspects on the one hand, and the social and democratic aspects of society on the other hand. While it is undeniable that much progress has been achieved by EU policy on the side of workers' participation, empirical evidence presented in this chapter (derived from interviews with the European social partners), highlights the problems faced during the creation of an SE, and more specifically during the negotiation of workers' participation in an SE. The concerns raised by the European social partners with regard to Directive 2001/86/EC cover two key areas.

- Because of the complexity of negotiating employee involvement, creating an SE is a slow process.
- The downward spiral of national standards on workers' participation, which – particularly for the trade union movement – seems to have helped accelerate the process of creation of an SE, is in danger of reinforcing the scope for 'regime shopping' by companies interested in an SE.

In fact, both employers and employees appear to expect that SEs will restrict the scope for establishing effective coordination and harmonisation of workers' participation in Europe – something that has traditionally been seen as a key pillar for creating a politically democratic Europe. The above-mentioned factors may also explain the respective different positions taken by the European social partners (BUSINESSEUROPE and the European Trade Union Confederation (ETUC), and some European industry federations such as the European Metalworkers' Federation (EMF), the European Mine, Chemicals and Energy Workers Federation (EMCEF) and financial union UNI-Finance) with respect to a possible revitalisation of the debate on Directive 2001/86/EC. These positions are described below.

Intensifying complexity while eroding worker coordination in Europe

In September 2008 the European Commission published a communication entitled 'Communication from the Commission on the Review of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees' (European Commission, 2008). An important message of this communication is that it is too early to make a full assessment of the SE directive. According to the European Commission, 'the vast majority of Member States and the European social partners consider that, for the time being, the Directive does not require amendment or clarification. Given the virtual lack of experiences in applying the national provisions transposing the Directive, more time is needed before it can be established whether amendments are

necessary' (European Commission, 2008, p. 6). However, the communication does mention certain aspects that have been raised as major concerns by the European social partners. In particular, ETUC has requested that the Directive be clarified and corrected with regard to two key issues:

- the issue of employee participation at group level, because of the current wide cross-national diversity on the extent to which employees' participation is also exercised at group level in some countries and not in others;
- 'regime shopping', which the directive encourages by making it easier for companies to set up their head offices in countries where participation rights are weaker than others; ETUC highlights the risk that, under current European legislative provisions, Europe will become a model for the erosion (rather than the reinforcement) of the high standards found in some EU Member States (such as codetermination rights in Germany) down to a lowest common denominator (Kluge, 2005).

This second point came out strongly in the interviews with the European industry federations (in particular, EMF in the metal sector). These federations argued, for example, for the need to correct the 'before and after' provisions in Directive 2001/86/EC in order to prevent companies using this clause to become SEs as a way of avoiding codetermination rights.

In contrast, BUSINESSEUROPE sees the need to negotiate employee participation as a major factor hindering SE creation. For the European employer federation, 'the overly complicated and structured provisions around employee participation and the creation of the Special Negotiation Body (SNB), which are foreseen in the Directive, have been a substantial obstacle for companies to make greater use of the European Company Statute' (BUSINESSEUROPE, 2008, p. 1). With regard to board-level participation, BUSINESSEUROPE also mentions the often lengthy process (estimated to absorb around one third of total negotiating time) of creating an SNB in an SE situation.

Apart from the complex issue of employee participation arrangements, BUSINESSEUROPE sees other factors as hindering SE formation. An extract from its contribution to the consultation on the results of the study on the SE Statute is quoted here (BUSINESSEUROPE, 2010):

> *In BUSINESSEUROPE's view the formation of an SE is still a complex, expensive and time-consuming process. This is due to:*
>
> *Lack of public recognition and awareness of the SE legal form by Member States' public authorities. It has also proved difficult to explain the SE Statute to authorities outside the EU. The Statute is not very recognisable, a fact which can impose additional barriers to trade. Companies are hesitant to do business with the unknown;*
>
> *High number of references to national Member States' laws (65 references) and options given to them (22 options) on particular aspects of the Statute;*
>
> *The high level of the minimum capital requirements (€120,000). This is a disincentive for SMEs to adopt this company form, particularly in some Member States where SMEs account for about 99% of the national entrepreneurial fabric (e.g. Italy and Portugal);*
>
> *Complex workers' participation arrangements. BUSINESSEUROPE's members believe that the overly complicated and structured provisions around employee participation and the creation of the special negotiating body, which are foreseen in the Directive accompanying the SE Statute, can be a substantial obstacle to companies wanting to make greater use of this instrument;*

BUSINESSEUROPE is not currently demanding any revision with regard to the issue of workers' participation in the SE directive, because the practical experience and empirical knowledge is still so limited that it is not possible at this stage to identify concrete points of improvement (BUSINESSEUROPE, 2010, p. 4). However, a general key factor for the European employers' organisation is flexibility and self-regulation at company level.

Accordingly, BUSINESSEUROPE asks for less complexity and rigidity, calling instead for greater flexibility so as to strengthen the negotiating autonomy of the social partners at company level while widening the scope for the creation of a company-based employee participation system, which – it states – 'should be customised to the needs of the company' (interview with BUSINESSEUROPE, 18 November 2009). To this end, BUSINESSEUROPE suggests that agreements should be more tailored to the needs of respective enterprises. They should reflect the various financial conditions of the production units and their employees within the diverse national settings. Practices differ between both Member States and companies, reflecting different historical backgrounds and traditions and varying national social dialogue and collective bargaining systems. For BUSINESSEUROPE, it is important that negotiations on worker participation take this cross-national and intercompany diversity into greater account and be shaped to reflect it. The aim should be to allow companies to adapt rapidly and quickly to change within different situations, which are evidently nationally and locally embedded.

BUSINESSEUROPE recalls the principle stated in the revision of the EWC directive in its legislative work programme for 2008, that 'employees' involvement cannot be achieved through more restrictive EU legislation but by the progressive materialisation of a trustful social dialogue at the company level' (BUSINESSEUROPE, 2010, p. 2).

The union UNI-Finance agrees with BUSINESSEUROPE that there is a need for Directive 2001/86/EC to better capture the cross-national and intercompany differences while creating a stronger framework for exercising coordination across different national contexts and various cultures. However, here the basic rationale informing this argument is to ensure that all workers and the trade unions within the different production units are accurately represented at the group level. This implies the need to strengthen the links between the EU, national and plant level to ensure more effective cross-national coordination of workers' participation standards in European law, in order to increase employee involvement in commercial decision-making processes (Pulignano, 2005). This requires a better definition in the current European legislation of the role of the works councils in an SE and the resources available to such councils to better support workers' involvement. This covers such issues as the setting up of meetings and the guarantee of the presence of union experts. With this regard, UNI-Finance highlights a big gap between what exists at present in some national industrial relations contexts, in terms of resources and expertise available to employee representation structures, and what the current Directive 2001/86/EC provides (or rather 'does not' provide) at the EU level in this respect. In an interview, a respondent from UNI-Finance says:

> *If you look at Germany, the works councils have access to as many resources and as much expertise as they want; in France also. What we have at EU level is a rudimentary structure of workers' representation. It is a cheap solution which hinders the purpose of effective employees' involvement and it contradicts the intention of the European legislation, and which therefore does not help' (interview with UNI-Finance, 17 February 2010).*

Resources and expertise need to be created in order to facilitate and to reinforce the process of negotiating workers' involvement in an SE. For the European industry federations as a whole, this relates

directly to another crucial deficiency of the current European legislation, one that risks undermining the development and exercising of an effective coordination and harmonisation of participation standards in Europe. This is the absence in the directive of any reference as to how to deal with the training needs of the members of the SE works council and also, more generally, of the workers' representatives on the supervisory board or on the board of directors. Hence, the European industry federations seem to be concerned about the 'serious engagement' by companies with the principle of worker participation as introduced by the European legislation. This seems to undermine not only, as stated above, the guarantee for minimum standards on participation in Europe but also – more importantly – the possibility for creating the conditions for building up coordination to the advantage of both 'employees' and 'companies' at the EU level. For example, European trade unions in the finance sector point out that one of the recurring obstacles encountered by companies in establishing an SE is the lack of cross-national coordination on guarantee schemes or tax regimes.

From the employees' side, most of the European unions interviewed for this report (EMF and UNI-Finance, for instance) have developed their own strategies of cross-border coordination, advice and support in order to guarantee that a European, rather than a national, perspective is followed and respected where worker participation in an SE is under negotiation. This is done in order to achieve two major aims:

- to pool resources and enhance understanding among employees so that all the national unions involved in negotiating an SE share a common position;
- to prevent companies 'playing off' workers and unions from different countries against each other when negotiating workers' participation in the SE.

In the light of 'bad' and 'good' SE negotiation experiences, the European industry federations view the presence of a European coordinator dedicated to assisting and guiding the negotiation process from the union side as crucial. They see this as important for two reasons:

- the rich experience that the European industry federation can provide regarding the different national employees' views, cultures and traditions;
- the fact that the European industry federation is often seen as an honest broker, not representing a particular national interest and therefore potentially able to play a positive role as mediator in the process of negotiation.

A good illustration of this is the Allianz case in the finance sector where UNI-Finance monitored the negotiation from a European perspective. Likewise, in the metal sector, the head of the EMF Company Policy Committee argued:

> *Why do we need coordination? Without coordination you get the problems that you had in MAN Diesel, that one country where the headquarters of the company is based does the entire negotiation for an SE and for the workers' involvement in the SE. This is why in EMF we have set up coordination guidelines for the negotiation of workers' involvement in an SE, so as to develop a European approach' (interview with EMF, 11 March 2010).*

Similarly, the EMCEF General Secretary emphasised that:

> *European industry federations and the trade union movement at the EU level can play an important role of coordinating across borders and thereby creating a European strategy. For this reason we at EMCEF are, among other things, investing heavily to try to integrate*

> *the members of the SE works councils also in the social dialogue activity at the European sector level' (interview with EMCEF, 2 December 2009).*

It may be argued that the coordination provided by the European industry federations helps accomplish the goal of Europe's social policy strategy, which is to coordinate and harmonise participation standards with a view to achieving greater cross-national employee involvement in commercial decision-making processes.

Does Directive 2001/86/EC improve the regulation of workers' participation?

Interviews with the European social partners flagged some major concerns already mentioned in the Communication by the European Commission (European Commission, 2008) with regard to Directive 2001/86/EC. For example, the ETUC pointed out that in the absence of any limitation in Directive 2001/86/EC, the conversion of an SE into a public limited company (see Art. 66 of the current SE regulation) could result in the loss or reduction of participation rights if the form of company adopted is not subject to employee participation or if the level of employee participation is reduced. Here, both EMCEF and UNI-Finance have emphasised the need in the directive to reinforce the relationship between the European and the national levels by guaranteeing that all sites, regardless of their size, are considered inside the scope of jurisdiction of the SE and effectively represented within the SE works council. This is a crucial issue for the European industry federations, which see it as a precondition in order to prevent company managements from creating competition between individual plants, especially in situations of restructuring. More generally, as stated by the EMCEF general secretary, this highlights a discrepancy of the directive, which risks jeopardising the democratic intention of worker participation that underlies European legislation.

The trade unions also stress the danger of negative effects of contradictory provisions of the SE directive on individual national systems of workers representation: whereas the directive claims to promote and reinforce worker participation rights at the European level, it risks undermining the industrial relations structures guaranteeing the same rights within national settings. This becomes evident when looking at concrete national contexts, as in France:

> *The problem in France is that the constitution of an SE – and the consequent process of negotiation of workers' involvement – risks putting all the companies involved in the process at the same level, leaving you with only establishments in all countries. As we know, the French system of industrial relations is characterised by an articulated structure of employees representation rights which are guaranteed at the different levels; this means the plant as well as at the level of the holding (group level): for example the right of expertise is guaranteed in France at the level of a 'comité du groupe'. If you do not have a 'comité du groupe' any more because of the process of constitution of an SE, basically you lose that right' (interview with EMF official, 2 March 2010).*

The expected effect is a downward spiral with regard to the possibility of harmonising worker participation rights in Europe. In addition, national structures of employees' representation rights and collective bargaining are placed in jeopardy. According to the EMF, some French trade unions are now openly warning of the threat that this situation potentially poses to the stability of the national system of workers' representation.

These aspects and trends are interpreted in a different way by the European employers' organisations. From the point of view of BUSINESSEUROPE, for example, a positive feature of the SE Statute is the

flexibility and freedom it provides in the selection of appropriate forms of corporate governance for national companies (BUSINESSEUROPE, 2010, p. 3):

> *Flexibility is key when it comes to choosing among different company forms available in Member States. The SE Statute provides such flexibility. As the Study shows, Germany and the Czech Republic, the two largest hosts of SEs, are good examples where the SE offers greater flexibility than national company formats.*

Conclusions

It is widely acknowledged that workers' participation is at the core of the European Social Model. European legislation and European social policy have promoted employees' participation while encouraging the development of social democracy in Europe. This has, however, been a highly contested, complex and discontinuous process. The views of the European social partners on the 2001/86/EC Directive on the European Company Statute, discussed above, seem to confirm the problematic nature of the process of negotiating employee participation in creating a European Company (or SE). In particular, although they have different perspectives, which reflect the diversity of the interests represented, the social partners in Europe have emphasised two major concerns. The first is the complexity of the process of negotiating employee involvement and participation, with the increasing difficulty in capturing the cross-national and intercompany diversity in the context of creating an SE. This can have serious consequences, especially with regard to how far coordination can be enforced and created across (and within) borders. This is not only crucial for employees but also for companies in Europe in order to promote the internationalisation of their own businesses, and therefore to enhance competitiveness. Furthermore, trade unions at both national and European level are fully aware of both the opportunities and the risks associated with organising worker involvement in an SE against the background of a complex interplay of national and transnational legal rules. This is why they have been strongly engaged in recent years in setting up agreements of substance, with solid legal wording). The type of negotiated participation in line with the SE legislation provides flexibility not only to companies but also to the trade unions, while enabling them to bridge the range of different cultures and understandings across the different countries in Europe. The second concern is the growing downward spiral in terms of national standards' securing workers' participation. For the trade unions in particular, this can potentially reinforce the process of 'regime shopping' by companies interested in an SE and jeopardise fundamental national employees' rights by encouraging and strengthening unfair competition among workers between (and within) companies in Europe.

Inventory of SE agreements 2

Overview of existing SEs

A major problem with attempting to survey SE formation in Europe is the absence of a central EU company register. This lack of information, which has long been a concern of European as well as other key actors,[9] is reflected in the number of SEs as documented in the *Official Journal of the EU*. A search of the Tenders Electronic Daily (TED) online database yielded only about 350 registered SE companies on 1 June 2010. For this reason, a more comprehensive and reliable source of SE-related information is the European Company Database (ECDB) run by the ETUI in Brussels. This relies on information not only from the Supplement to the *Official Journal of the EU* but also from national company and statistical registers. Further information comes from a network of correspondents and experts of the 'SEEurope Network', from trade unions and from SEs directly. As of 1 June 2010, the ECDB listed 588 SEs established across Europe, of which 145 were regarded as 'normal'.

This section of the report presents an overview of all established SEs, with a special focus on 'normal' SEs, together with some basic information on the respective companies and the SE formation process.[10] It should be stressed that the purpose of this inventory is not to provide an in-depth analysis of all aspects of employee involvement in SEs. Thus, this analysis should be read in conjunction with the results of the fieldwork on individual case studies (see Chapter 3 of this report).

When the ECDB was created in 2004, four categories of SEs were identified on the basis of effective operation (see box).

SE categories as used in the European Company Database

'Normal' SE: an SE with operations and with at least five employees (five is the lowest threshold for employee participation in the EU countries).

'Empty' SE: an SE with operations but without employees.

'Shelf' SE (also known as 'shell' SE): an SE that has neither operations nor employees. 'Shelf' SEs are not set up for specific business purposes.

'UFO' SE: A UFO SE is likely to be operating, but no information is available on the number of employees. By nature, these are companies about which little is known (usually only name, date and place of registration). The 'UFO' category includes 'micro SEs' (SEs with fewer than five employees.)

According to the ECDB, as of 1 June 2010 only 145 out of 588 SEs were regarded as 'normal' SEs. While a little is known about a further 160 or so SEs (which are either 'shelf' or 'empty' SEs), hardly any information is available on a large number (259) of 'UFO' SEs (see Table 2).

[9] Accordingly, the need for an EU register of SEs was a common demand in most of the replies to the European Commission DG Market's consultation on the SE Statute carried out between January and May 2010.

[10] See also the more detailed lists of all SEs in Europe in the annex to this report.

Table 2: Established SE companies by countries, type and corporate governance structure

Countries	Established					Corporate governance		
	Normal	Shelf	Empty	UFO	Total	One-tier	Two-tier	n/a
Austria	7	0	5	2	14	9	5	
Belgium	3	0	2	4	9	8	1	
Cyprus	5	0	2	5	12	6	3	3
Czech Republic	20	43	4	209	276	2	274	
Denmark	0	0	2	0	2	2		
Estonia	3	0	0	1	4	1	3	
France	9	0	1	9	19	13	4	2
Germany	73	24	21	15	133	56	60	17
Hungary	2	0	1	0	3	2	1	
Ireland	0	0	3	2	5	4	1	
Latvia	1	0	1	1	3	1	2	
Liechtenstein	1	0	0	3	4	2		2
Luxembourg	3	1	5	7	16	12	2	2
Netherlands	9	0	13	4	26	14	8	4
Norway	3	0	2	0	5	5		
Poland	0	0	1	1	2		1	1
Portugal	0	0	0	1	1	1		
Slovakia	2	7	2	10	21	5	16	
Spain	0	0	1	0	1		1	
Sweden	2	3	1	3	9	9		
UK	2	0	15	6	23	5		18
Total:	145	78	82	283	588	157	382	49

Note: Bulgaria, Finland, Greece, Italy, Lithuania, Malta, Romania and Slovenia have no SEs
Source: ETUI: European Company Database, 1 June 2010

Nearly one-quarter of all SEs are registered in Germany. When it comes to normal SEs, the proportion headquartered in Germany is even higher: more than half (73) of all normal SEs are registered here. It should be noted that, on account of the country's fairly comprehensive reporting system, information on German SEs is generally easier to obtain through trade unions or direct contacts than in other countries. These include in particular the Czech Republic, where more than 45% of all SEs are registered but little information exists. Out of the 276 SEs established in the Czech Republic, only 20 have more than five employees (according to the Czech statistical register, ARES), but little or nothing is known about the aspect of employee involvement.

As of 1 June 2010, there were 82 'empty' companies.[11] These companies are worth listing, because they become interesting when employees are hired or transferred from another company within the group into the organisation, thereby converting them into 'normal' SEs.

As already mentioned, the circumstances of establishment, employee figures and employee involvement in a large majority of the SEs are not known. There are about 283 of these 'UFO' companies. It is difficult to estimate what percentage of these are 'normal' companies, but it is likely that many of them are operating SEs with only a few employees, or 'empty' companies. (Some of the companies have

[11] See list in the annex to this report.

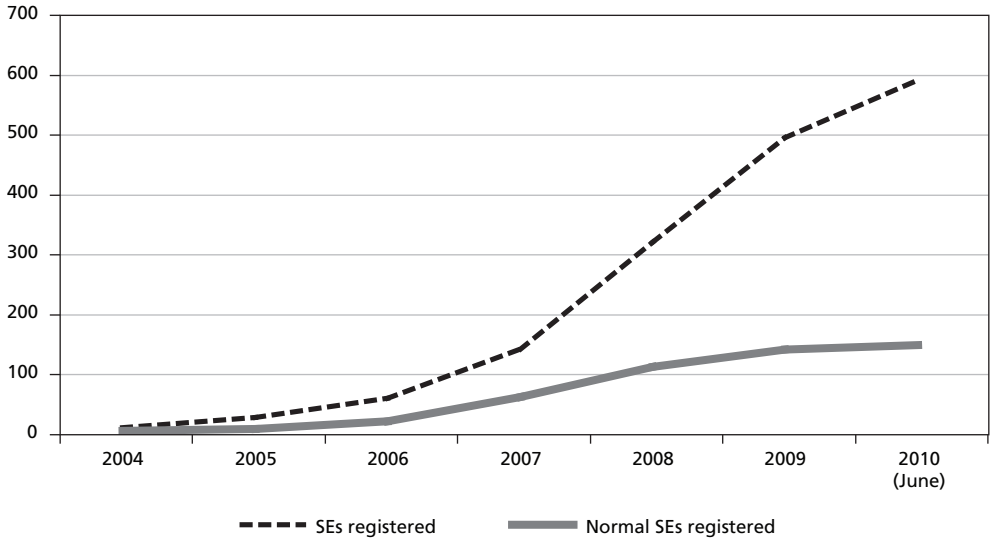
official websites, but the majority have no contact details at all and not even the most basic data are published in national registers.) The overwhelming majority (209) of UFOs are located in the Czech Republic. These companies have been established by 'activation' of a 'shelf' SE, but further information was not available subsequent to their sale.

As regards country of origin, the national registers indicate that there are SEs with registered headquarters in 21 European countries – in 19 EU Member States plus Liechtenstein and Norway. This means that there are no SEs registered in eight EU Member States, amongst them Finland and Italy.

An SE can choose freely between a one-tier and two-tier corporate governance system irrespective of national legislation. Taking all SEs together (including 'shelf' SEs), 361 companies have opted for the two-tier system and 157 for the one-tier system (in nine cases, no information is available). During the process of establishment, only a few companies have decided to change their former governance structures, typically from two-tier to one-tier, in order to simplify the company management structure (for example BVE Holding SE, Curt Richter SE, unitedprint.com SE) or, as it turned out, patently to reduce codetermination rights in the case of Germany (for example Bitzer SE).

The number of SE establishments has increased year on year. In the first year, only seven SEs were established. Mainly due to the establishment of 'shelf' SEs, the number of SEs registered annually (177 in 2008 and 179 in 2009) went up significantly during the period examined.

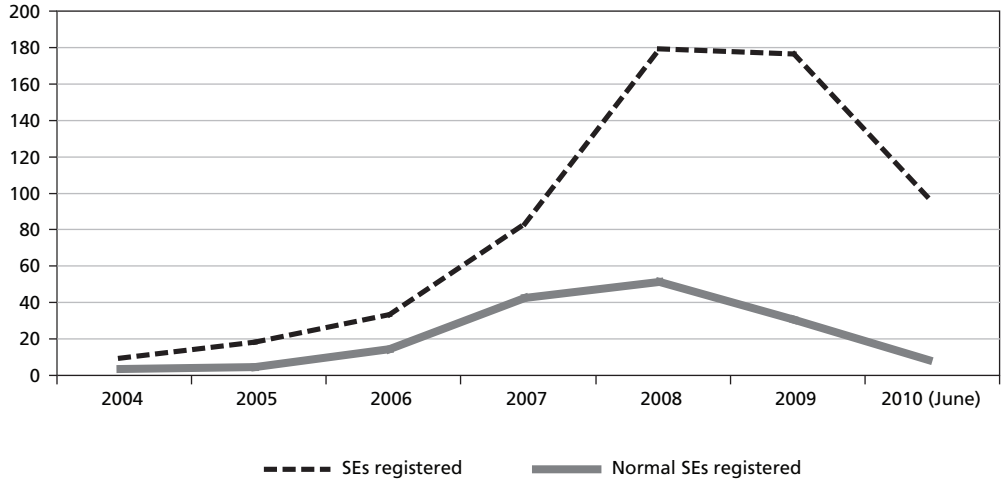
Figure 1: Total number of SEs registered, 2004–2010



Source: ETUI: European Company Database, 1 June 2010

Even after 2008, during the financial and economic crisis, the numbers of SEs established increased. There were 177 in 2008, 179 in 2009, and 96 SE formations between January and the end of May 2010.

Figure 2: Annual SE registrations, 2004–2010



Source: ETUI: European Company Database, 1 June 2010

Basic characteristics of 'normal' SEs

Form of establishment of SE

Nearly 45% of normal SEs have been established by the conversion of an existing company pursuant to Art. 37 of the SE Statute. While around one quarter of new SEs resulted from merger processes (Art. 17–31), only comparatively few (14) were established from holding companies pursuant to Art. 32–34 or as subsidiaries.

Table 3: Normal SEs by country and form of establishment

Countries	Normal SEs	Form of establishment					
		Conversion	Merger	Holding	Subsidiary	Activated shelf	n/a
Austria	7	5	1		1		
Belgium	3	1	1		1		
Cyprus	5	1	4				
Czech Republic	20		3	1	4	8	4
Estonia	3	1	2				
France	9	7	2				
Germany	73	36	11	2	2	22	
Hungary	2	1		1			
Latvia	1				1		
Liechtenstein	1		1				
Luxembourg	3	1	2				
Netherlands	9	5	3		1		
Norway	3	2	1				
Slovakia	2	2					
Sweden	2	1	1				
UK	2	1	1				
Total:	145	64	33	4	10	30	4

Source: ETUI: European Company Database, 1 June 2010

Thirty normal SEs were formed by the activation of a 'shelf' company. It should be noted that this form of foundation is not regulated by the European Company Statute. In this case, not only were the employee involvement aspects ignored, but in most cases the cross-border factor was also ignored. According to the statute, cross-border operations are a prerequisite for both the founding and operation of an SE, but in the case of 'shelf' SEs, when a company is bought and operations begin, no cross-border element is necessary at all. In four 'normal' cases, the exact form of foundation is not known.

SEs by economic sector

As regards sector of activity (see Table 4), there is still no clear trend. However, the number of companies with financial profiles (typically bank services, real estate investment companies and insurance), metal profiles (manufacturers of metal products, automotive sector), chemical profiles or in commercial services (household appliances, clothing, paper, online shopping, etc.) is higher than those in other sectors, such as industry, business and information technology services IBITS (such as software development), building and woodwork, commercial or other activities.

Table 4: Normal SEs by country and sector of activity

Countries	Normal SEs	Sector of activity											
		Services Finance	Metal	Services Commerce	Chemicals	Other	Other services	Services IBITS	Building and woodwork	Food, hotels, catering and agriculture	Transport	Textiles	n/a
Austria	7	2	2				1		2				
Belgium	3	1		1							1		
Cyprus	5	3				2							
Czech Rep.	20	7	1	4	1		4	1			1		1
Estonia	3	3											
France	9	6			1		1			1			
Germany	73	8	21	8	17	3	5	4	1	4	1	1	
Hungary	2		1				1						
Latvia	1			1									
Liechtenstein	1					1							
Luxembourg	3	1	1					1					
Netherlands	9	4		1		1	1	1		1			
Norway	3					1					2		
Slovakia	2			1				1					
Sweden	2	2											
UK	2	2											
Total:	145	39	26	16	19	8	13	8	3	6	5	1	1

Source: ETUI: European Company Database, 1 June 2010

Size

Table 5 illustrates the numbers of employees in SEs. Where a multinational company is transformed into an SE, only those employees who are supposed to be covered by an agreement are counted (that is, those who are employed in a European country). As the table shows, exactly half of all normal SEs have fewer than 500 employees. This is partly the result of the high number of activated 'shelfs' in the Czech Republic and Germany. In some cases there is no cross-border element, and the SE exists in only one country or operates in several countries but with employees in only one country.[12]

[12] These 'empty' companies are set up as a parent company and there is no employee involvement aspect even if there are employees within the group.

Table 5: Normal SEs by country and number of employees concerned

Countries	Normal SEs	Number of employees					
		0–499	500–1,999	2,000–4,999	5,000–9,999	>10,000	n/a
Austria	7	4	1			1	1
Belgium	3	2	1				
Cyprus	5	2	1		1		1
Czech Republic	20	19					1
Estonia	3	3					
France	9	3	4	1	1		
Germany	73	24	13	19	5	7	5
Hungary	2	1	1				
Latvia	1	1					
Liechtenstein	1	1					
Luxembourg	3	2			1		
Netherlands	9	7	1	1			
Norway	3	1	2				
Slovakia	2	2					
Sweden	2	2					
UK	2	1	1				
Total:	145	75	25	21	8	8	8

Source: ETUI: European Company Database, 1 June 2010

Aspects of employee involvement

When it comes to different aspects of employee involvement in SEs – such as establishing SNBs, whether or not agreements on employee involvement have been reached, and the character of the agreement (information and consultation, or employee participation at board level) – it must be noted that limited information is available. For example, the ECDB provides information for only about half of all normal SEs on the setting up (or not) of an SNB; in the other half, there is no information available (see Table 5). Again, in those cases where a shelf company has been activated or the company was empty at the time of establishment, employee involvement was generally not an issue at the time ('n/a' refers to these cases and also includes those where information was not available).[13]

An SE was established in 67 cases. In just nine cases was it decided by employees (in some cases under the influence of employers) not to set up a SNB (for instance, Demonta SE, I.M. Skaugen SE and Lyreco SE). Eleven out of the 67 SNBs terminated negotiations after one or more meetings (among them Compensa Life Vienna Insurance Group SE and SE Sampo Life Insurance Baltic) or the parties failed to reach a common position and remained with the standard rules (including in the cases of Mensch und Maschine Software SE and RKW SE). In most cases (62), negotiations resulted in an agreement at least on information and consultation of employees.

In seeking to summarise the basic features of the agreements on employee information and consultation, it has to be stressed that no two agreements are the same. However, common features normally include the following items: provisions on election procedures for employee representatives; frequency of meetings (once or twice year, with extra ad hoc meetings if necessary); issues discussed in meetings; terms of office of employee representatives; organisational and language assistance for communication;

[13] A table summarising basic information on all 'normal' SEs, including basic details on employee involvement, is included in the annex to this report.

secrecy and confidentiality issues; opportunities for training and expert assistance; and, where applicable, the composition of employee representation in the SE board.

Table 6: Normal SEs by country and aspects of employee involvement

Country	Normal SEs	EWC previously existed	Set up of SNB			Agreement reached			Information / consultation	Participation
			Yes	No	n/a	Yes	Negotiation terminated or failed	Fall back position		
Austria	7	1	6		1	4	2		4	3
Belgium	3	0			3					
Cyprus	5	0	3		2	3			3	1
Czech Republic	20	0	1	1	18		1			
Estonia	3	0	3				3			
France	9	0	4		5	4			4	3
Germany	73	15	47	5	21	43	3	1	45	23
Hungary	2	0		1	1					
Latvia	1	0			1					
Liechtenstein	1	0			1					
Luxembourg	3	0	1		2	1			1	0
Netherlands	9	0	1		8	1			1	0
Norway	3	0	2	1		2			2	0
Slovakia	2	0		1	1					
Sweden	2	0	1		1	1			1	0
UK	2	1	2			2			1	0
Total:	145	17	71	9	65	61	9	1	62	30

Source: ETUI: European Company Database, 1 June 2010

A variety of different arrangements are made for information and consultation procedures and bodies. Apart from one company in the UK (BetBull SE), all SNBs that decided to carry on negotiations had an agreement to set up a European-level platform for consultation/negotiations. If no EWC existed before, in most cases a new SE works council was set up (as in the case of GfK SE). If a EWC did exist already, it was retained and/or extended (as at BP Europa SE and SCAN SE), or replaced by an SE works council (as at Wilo SE). Alternatively, parties have agreed on less formal platforms, such as regular 'hearings' or 'boards of employees' (as in Vogt Group SE). In the case of Deichmann SE, no platform at all was set up; instead, annual consultation takes the form of a written report.

In some cases the new EU interest representation body is more strongly positioned than a previous EWC. For instance in the case of Tesa SE, the SE works council has the right to bring up new items outside ordinary information and consultation processes (see Chapter 4 of this report).

Significantly less agreement has been reached on participation than on information and consultation. Currently 30 agreements provide participation rights besides information and consultation procedures, most of them in Germany (23), Austria (3) and France (3). According to the 'before and after' principle, agreements secure previously existing participation rights (BASF SE). In principle however, in several cases (especially in Germany) employees have lost board seats (as at Warema Rankhoff SE; see also the case study analysis in Chapter 3) after transition. The most common situation, following the 'before and after' principle, is that where there was no employee participation on boards beforehand, there

was none either after the SE was established (as at Curt Richter SE, Nordex SE and Cloppenburg Automobil SE).[14]

'Shelf' SEs

The high number of 'shelf' companies is worth noting, especially in the Czech Republic and Germany. While it can be argued that the setting up of 'shelf' SEs should not be allowed under the SE legislation, practice is different, with a European total of at least 284 (including both SEs set up by activation of a 'shelf' and current 'shelf' SEs). Most of these 'shelf' companies have been set up by a small group of undertakings, each time with the same business concept – to offer SEs with a simple standardised company structure and complete support for sale. The main undertakings producing 'shelfs' in the Czech Republic are the following:

- CHAMR Enterprise SE (CHAMR & PARTNERS s.r.o.);
- Europea Capital SE (SMART Office & Companies, s.r.o.);
- Soffice SE;
- Euromater SE (Spolecnosti Online s.r.o.);
- Quick Start Europea SE;
- Ready Made Companies SE.

The majority of Czech SEs are set up as 'shelfs' by a parent SE according to Art. 3(2) of the regulation.

Companies selling 'shelfs' in Germany have been in operation for quite a long time – for instance, Foratis AG and Blitzstart Holding AG. It should be noted that these companies sell not just registered SEs but also other legal company forms, such as German GmbHs, AGs or even Spanish S.L.s or S.A.s. The reason for setting up such companies obviously differs. In the Czech Republic, there is still a need for a clear explanation, though it is likely connected to ideas of potential tax optimisation. In addition to the Czech case, setting up 'shelf' SEs seems be in fashion as a practical way to avoid bureaucratic company startup processes. In Germany, 'shelf' SEs are more likely to be set up for a specific purpose. German 'shelfs' usually act as vehicles for the conversion of an existing company. Companies that sell 'shelf' SEs usually advertise the following added values:

- simplicity of transnational relocation of the company seat;
- ease of establishing further subsidiaries within the EU without any further special requirements;
- free choice between dual or monistic corporate governance;
- a good reputation and possibility of listing on stock exchanges;
- favourable conditions of codetermination and employee involvement from the point of view of company management.

These 'virtual' SEs are problematic. For one thing, 'shelfs' do not need a European dimension: the involvement of companies from at least two EU Member States is not necessary. Instead, after activation (when 'shelf' companies are sold and usually renamed by the new owner), they can conduct business under a normal Czech company statute without having subsidiaries/affiliates in other EU countries.

[14] For basic information on the type of employee involvement, see the inventory of SEs in the annex to this report.

The field of activity in the case of Czech 'shelfs' is usually 'property' or 'real estate management', since this field is not subject to trade law and thus no trade authorisation is required.

These 'shelf' SEs are also problematic because by definition no negotiations on worker involvement can have taken place. As the SE directive deals only with the initial situation (that is, the moment of foundation), it is legally unclear what happens if employees are transferred into an 'activated' (a sold and renamed) company at a later stage.

According to investigations carried out by the SEEurope Network in 2009, at the moment of foundation – since neither the parent nor the subsidiary SE have any employees – the management of the parent SE decides to implement the standard rules. This is usually written into the foundation treaty and noted in the company register. Thus Sections 56–62 of the Czech Transposition Act are applied. Section 59(2) of this act states that the employees' committee can decide after four years whether to renew negotiations on worker participation according to Sections 51–53(1) of the Transposition Act. Furthermore, the company treaty also specifies that it is the duty of the management to implement those rules according to the actual situation of the SE, and thus to respect the involvement regulations when workers are employed.

An analysis of 'shelf' activation figures (see Table 7) shows that the overwhelming majority of activated 'shelfs' (206 in total) have been registered either in the Czech Republic (155) or in Germany (45). Only three other cases of shelf activation have been reported: in Ireland, Cyprus and the UK. According to investigations carried out by the Hans Böckler Foundation, out of these 200-plus activated 'shelf' SEs, only 30 are normal SEs (22 in Germany and eight in the Czech Republic) and agreements on employee involvement have been negotiated only in four German cases (Donata Holding SE, Allianz Investment Management SE, Allianz Shared Services SE ASIC and Bitzer SE).

Table 7: Activation of shelf SEs (as of 1 June 2010)

Countries	Total number of activated shelfs	Transformed into normal SEs	Activated shelfs with an agreement on employee involvement	Activated shelfs without an agreement on employee involvement
Czech Republic	155	8	0	147
Cyprus	1	0	0	1
Germany	45	22	4	41
Ireland	1	0	0	1
Slovakia	3	0	0	3
United Kingdom	1	0	0	1
Total:	206	30	4	202

Source: ETUI: European Company Database, 1 June 2010

Conclusions

A number of major conclusions and key issues arise from the inventory of SEs and in particular of normal SEs.

The first point concerns the lack of information on SEs, which has also been highlighted by various actors dealing with SEs in Europe. Since there is no central company register and no common principle of reporting on company information by national sources, the available information on SEs is very limited and there are significant information gaps with regard to important aspects of the implementation of the SE Statute in different national contexts.

However, a striking result of the inventory carried out on the basis of the ETUI ECDB is that normal SEs as foreseen by the Statute clearly form a minority group: the most important group, which includes half of all European Companies, is formed by so-called 'UFOs' – cases for which no information is available. European Companies that are normal – that is, operationally active – are outnumbered by SEs without operational activities ('shelf' SEs) or employees ('empty' SEs).

With regard to the SE directive and the issue of employee involvement in the European Company, our knowledge is even more limited due to the fact that there is no obligation on SNBs or SE representation bodies to publish SE agreements and related information. Here, the practice mirrors the situation of European works councils, where the available information comes from agreements made available on a voluntary basis. This naturally results in significant gaps in knowledge.

This means that, for information on the implementation and practical experience of employee involvement, it is necessary to rely mainly on case study evidence and investigations into individual company practice. This is the main purpose of the following section. However, a stocktaking of basic forms of employee involvement in those SEs that are regarded as normal reveals a number of issues.

- There is no information available on nearly half of all normal SEs. It is likely that in most of these cases no agreement was concluded for various reasons (in particular the size of the company).
- Out of the remaining 80 SEs where activities are documented, only nine companies have decided not to set up an SNB. Here again the small size of the company in terms of the workforce or the lack of interest are reported as the main reasons. There is only one case documented where negotiations on employee involvement failed.
- A somewhat unexpected result of the inventory is that only 17 cases out of 80 was an EWC structure in existence at the time the SE was established. In all other cases, transnational employee involvement had to be established from scratch.
- A brief overview of the basic characteristics of employee involvement in SEs shows that half of all documented agreements (a total of 61) also contain provisions on employee participation at board level. Here again the domination of the scene by German companies (23 out of 30) is striking, with France, Austria and Cyprus being the only other countries where cases of employee participation are documented at all.

A final result of this inventory concerns the high number of 'shelf' and 'empty' SEs – in particular, in the Czech Republic and Germany. This highlights a possible weakness of the directive: it does not foresee any mechanism of negotiating employee involvement in cases where 'empty' or 'shelf' SEs are transformed or developed into operationally active companies. The way in which the SE directive focuses on the situation of a company at the time of establishing an SE, which is mirrored in the 'before and after' principle, results in problems with regard to employee involvement rights at the transnational level in situations of change. On top of this, neither the SE Statute nor the directive foresaw the possibility of European Companies without any operational practice being established. The high number of 'shelf' SE formations and the increasing number of shelf SEs being activated should therefore be more carefully observed and analysed than in the past.

Results of case studies 3

Company profiles and contexts of SE creation

The company sample

As described earlier in this report, the 10 companies analysed in the case studies show major differences with regard to their sectoral contexts (services, manufacturing, construction) as well as size (varying from just over 1,000 employees to more than 150,000) and the degree of internationalisation of the workforce (the sample includes multinational companies such as BASF or Allianz with large global workforces, while other companies' activities are concentrated on a rather small number of European countries).

There are also differences in the way the SE was created and the historical background behind the creation. While most SE agreements are based on conversion, there are also three agreements that were reached in the context of a merger. The European companies analysed here were created within a time span of five years, the first agreement being signed in 2004 shortly after the Directive came into force and the last one in December 2009.

Table 8: Company profiles

	Allianz SE	BASF SE	Elcoteq SE	Equens SE	Fresenius SE	GfK SE	Hager SE	MAN SE	Scor SE	Strabag SE
Head-quarter country	Germany	Germany	Finland/ Luxembourg	Netherlands	Germany	Germany	Germany	Germany	France	Austria
Sector	Financial and insurance activities	Manu-facturing	Manu-facturing	Financial and insurance activities	Manufacturing/ health, social services	Information, communi-cation	Professional, scientific, technical	Manu-facturing	Financial and insurance activities	Construc-tion
Size of workforce	153,203	104,800	12,000	1,300	130,510	10,058	10,500	48,000	1,500	75,548
SE creation date	2006	2008	2005	2008	2007	2009	2007	2009	2007	2006
Method of formation	Merger	Conversion	Conversion	Merger	Conversion	Conversion	Conversion	Conversion	Conversion/ merger	Conversion
Corporate governance	Two-tier	Two-tier	One-tier	Two-tier	Two-tier	Two-tier	Two-tier	Two-tier	One-tier	Two-tier

Source: Authors' own data

Motives behind SE creation

The sample of case studies shows that there is a wide variety of motives and objectives triggering the conversion or creation of a new corporate structure and resulting in SE registration. Some of these motives are common to many cases, while others are very case specific.

The difference in motives can be illustrated by the Strabag example. The company management wanted to create the first-ever registered SE in Europe. As the chief executive officer (CEO) indicated in a letter to the EWC, the aim was to be registered as the first SE in Europe on 8 October 2004 – the day the SE directive came into force. However, as described below, this attempt failed because of problems in negotiating employee involvement. In addition to this desire to raise its profile, the company also wanted to support the development of a European identity for the company, to reduce costs by lessening the number of subsidiaries and to facilitate mergers. Other reasons included: forming a solid and uniform group structure; simplifying the company's pan-European activities; improving efficiency

and competitiveness; gaining EU-wide legal acceptance; attracting capital for cross-border projects; making cross-border mergers easier; and transferring the company's seat.

This catalogue of driving factors and motives for SE creation mentioned in the company's official press statements and documents is typical for nearly all the companies in the case study sample. For example, GfK said in a press statement at the beginning of 2009 (five years after Strabag's initial attempt at SE creation), that its conversion into an SE 'corresponds to the GfK Group's understanding of itself and further underpins its international perspectives and structure'. This view also came through in interviews with the management representative, who made the point that GfK's becoming an SE would give the company a more international structure than a standard German AG – an attractive prospect.

All companies in the case study sample (and all operating SEs in Europe today) are doing business on a transnational basis. However, the degree of internationalisation and Europeanisation differs quite significantly. GfK is an example of a company that is clearly more European than German: it has more than 10,000 employees worldwide (6,200 in Europe), only a minority of whom are employed in Germany (1,900 in 2008).

Like GfK, Fresenius referred to the internationalisation of the company as a major reason for choosing the new legal form of an SE in 2006. The previous legal form was a German public limited company (Fresenius AG), which – according to the management – did not sufficiently reflect the group's main business activities, which went well beyond Germany. At the time of the conversion, approximately 50% of all Fresenius employees were located in the EU and the EEA. Alternatives to the conversion had been evaluated by the management board but no option was found to be sufficiently accommodating to the interests of the company and shareholders.

Very similar patterns of Europeanisation, with a much higher workforce abroad than in the home country, can be observed at Hager (with 7,600 employees in Europe, fewer than 2,000 of whom are in Germany – significantly fewer than in France), SCOR (with the majority of its employees in France) and Equens (with only 200 employees in Germany out of a total workforce of 1,300, most of whom are in the Netherlands).

Another reason for adapting the legal form of an SE may lie in the advantages of simplified acquisition of companies in EU or EEA countries and the harmonisation and optimisation of corporate structures of a cross-border group through the SE. An example of this is the Allianz case. Allianz has chosen the legal form of an SE to combine its German-listed company Allianz AG with an Italian subsidiary, Riunione Adriatica di Securta (RAS), instead of using an alternative process for cross-border mergers – one that is complex, lengthy and costly.

In two companies in the sample, the SE creation is also linked with plans to install an EWC. In the case of both GfK and Equens, employees had already developed the idea of establishing an EWC in response to the Europeanisation of the company. The creation of an EWC would presumably have occasioned the same costs as an SE works council, but without offering the company the advantages provided by an SE.

Does SE creation weaken codetermination?

A rather controversial motive for SE creation is the issue of 'freezing' or even undermining employee involvement in a company's supervisory board structure. This is relevant in particular for those German

companies that are close to the legal threshold of 2,000 employees, which requires converting minority employee board-level representation into equal representation. In the sample considered in this report, this appears to have been a motive in the cases of GfK, Fresenius and Equens cases.

GfK employee representatives, particularly from Germany, emphasised that the decision to transform GfK into a European Company was linked to the requirements of German legislation on employee representation at board level. At the time of the conversion into an SE, GfK in Germany was very close to the threshold of 2,000 employees, although numbers have subsequently fallen. Becoming an SE meant that the one-third seat distribution to employee representatives on the supervisory board without external union involvement would not fundamentally change. The GfK management also confirmed in the interviews that avoiding a significant reorganisation of the supervisory board was a positive side effect of the move to an SE.

A further motive for SE formation is linked to the issue of the corporate governance of the company, as the Fresenius case illustrates. In its 'conversion report' the company stated that – under its new legal form – Fresenius would be able 'to continue its high-quality and efficient corporate governance practice' and 'to maintain the number of supervisory board members at 12'. According to Fresenius management, retaining a fairly small supervisory board was important for organising the corporate governance of the company in the most efficient way. After significant growth in the company due to a major acquisition, the larger number of employees made it necessary to enlarge the supervisory board substantially (from 12 to 20 members). In this situation, the transformation into an SE offered an opportunity to maintain the structure and size of the board.

It should be mentioned that in all the cases documented in this research, the 'freezing' of employee participation rights was not the only, or even the major, reason for converting a company into an SE. Indeed, the concessions made by the employee side on supervisory board representation were in most cases compensated for with other provisions agreed by the management. At GfK an extra supervisory board seat was negotiated for the employee representatives, and in the Equens agreement on employee involvement, the employee side achieved in return quite far-reaching results in terms of information and consultation rights and a well-equipped representation body.

Equens is an interesting case in this context. The SE is registered in the Netherlands and the overall majority of the workforce is based in the Netherlands. However, the initiative for the 2006 merger of German-based TAI and Dutch-based Interpay, which resulted in the establishment of Equens and SE registration, came from the German management of TAI. This merger would have resulted in significant changes in the governance of the new transnational company and employee participation even without a change in corporate governance and the creation of an SE. First, the works council would have had the right to delegate a worker representative to the supervisory board of the company, according to Dutch law on employee participation/codetermination. Secondly, the merger led directly to talks among the Equens interest representation bodies on establishing an EWC for the company. In this context, the SE is not offered the opportunity both to maintain the previous size and structure of the supervisory board and to organise employee information and consultation rights through an SE works council. According to both the management and the employee representatives in the Netherlands and Germany, this was the best possible solution.

Industrial relations and social dialogue contexts

European industrial relations are very diverse in a range of aspects, such as:

- terms of employee interest representation at workplace level;
- the role of trade unions at various levels;
- employee codetermination and participation at board level;
- collective bargaining roles and practice at various levels.

This variety is also reflected in the companies analysed in this research, operating as they do across a range of countries. Apart from a few cases (in particular Equens and Elcoteq), all companies face a variety of different national industrial relations contexts. These include:

- systems based on dual structures of interest representation by works councils and trade unions, as in Austria, Germany and the Netherlands;
- trade union-based systems of interest representation at the workplace level – in the UK, the Nordic countries and some countries in central and eastern, and southern, Europe;
- systems with a combination of union delegates at the workplace and in works councils, as in Belgium, France and Spain;
- systems of codetermination and employee participation at board level, as in Austria, Germany, the Netherlands, the Scandinavian countries and some central and eastern European countries; by contrast, in other countries these traditions are either non-existent (Belgium, Italy and the UK) or are only relevant in largely state-owned companies (France).

These differences in national traditions of employee interest representation also operate in tandem with different cultures of social dialogue at the national level and – even more so – at the company level. This can be illustrated by the Strabag case. This company has large workforces in Austria, Germany and in central and eastern Europe (CEE). In general, employee representation in the building industry is rather difficult. This is due to the coexistence of large business units and at the same time a very decentralised structure of operation at construction sites (as well as such factors as a high proportion of temporary and/or agency workers). At the same time, employee representation in the CEE countries – in private industry in particular – is characterised by fragmentation and weak structures at sectoral as well as company level. In contrast to this, both employee representation and social dialogue in the two major Strabag countries – Germany and Austria – are based on strong structures of company representation and solid trade union organisations, particularly for blue-collar occupations.

Table 9 illustrates some of the key differences between the EU Member States with regard to the main aspects of employee involvement.

As the case studies in this report show, these national differences have an effect on individual cases. For instance, some companies are heavily influenced by just a few national industrial relations contexts – Equens mainly by German and Dutch influences, SCOR and Hager by French and German industrial relations patterns, and Elcoteq by Finnish labour relations. However, other companies face a much greater diversity of national industrial relations and labour relations contexts.

Table 9: Industrial relations and labour relations in EU25

Country	Workplace representation	Board-level representation	Main level of collective bargaining	Collective bargaining coverage	Trade union density
Austria	Works council	Yes	Sector	99%	35%
Belgium	Works council + trade union	No	National	> 90%	56%
Cyprus	Trade union	No	Sector	60%–70%	70%
Czech Rep.	Trade union + works council	Yes	Company	25%–30%	25%–30%
Germany	Works council	Yes	Sector	70%	23%
Denmark	Trade union	Yes	Sector	77%	74%
Estonia	Trade union + works council	No	Company	20%–30%	17%
Spain	Trade union + works council	Yes (public companies)	Sector + company	80%	15%
Finland	Trade union	Yes	National	90%	71%
France	Trade union + works council	Yes	National + company	90%	10%
Greece	Trade union + works council	Yes (public companies)	National + sector	60%–70%	27%
Hungary	Trade union + works council	Yes	Company	40%	20%
Ireland	Trade union	Yes (public companies)	National	50%–60%	36%
Italy	Trade union	No	Sector	90%	34%
Lithuania	Trade union + employee representation	No	Company	10%	16%
Luxembourg	Work council + joint company committee in larger companies	Yes	Sector + company	70%–80%	34%
Latvia	Trade union + employee representation	No	Company	10%–20%	20%
Malta	Trade union	Yes (public companies)	Company	50%	69%
Netherlands	Works council + trade union	Yes	Sector	80%	22%
Poland	Trade union+ works council	Yes (public companies)	Company	40%	15%
Portugal	Trade union + works council	Yes	Sector	70%–80%	30%
Sweden	Trade union	Yes	Sector	> 90%	79%
Slovakia	Trade union or works council	Yes	Company + sector	40%	35%
Slovenia	Trade union + works council	Yes	National + sector	95%–100%	41%
UK	Trade union	No	Company	33%	27%

Source: ETUI, authors' own data

In SCOR, for example, incorporates the dual model in Germany and the single channel – in this case, the trade union – in the UK and Italy. In addition, its French operation is somewhere in between, having works councils with information and consultation rights and union delegates who have a monopoly on collective bargaining. The SCOR subsidiaries are, however, very small. In several subsidiaries there is no employee nor union representation. In France. there is representation through a *comité d'entreprise* (works council) and through trade union delegates according to French labour legislation. Two works councils representatives take part in meetings of the board of directors (*conseil d'administration*, CA) without voting rights. Until 1989, SCOR was a public company and according to the 1973 French Act on the democratisation of the public sector, one-third of CA members were elected by the workforce, with the representative union confederation having the exclusive right to present lists for the election of these workers' directors (*administrateurs salariés*). After SCOR's privatisation, two workers' directors were maintained. Their number was reduced to one in 2006, since when the employees' board representative has been elected by the workforce worldwide. This specific situation in France contrasts with different systems of employee interest representation in other countries relevant to SCOR. In Germany, interest representation at the workplace is based on works councils, which also exist at the national level (the group works council). In Italy, trade union delegations exist at the

enterprise level, very much influenced by the national trade unions, while in most of the UK SCOR subsidiaries no employee interest representation bodies exist at all.

In those companies where a significant portion of the employees are working in Italy – for example, Allianz – the process of establishing an SE has to take into account the specificities of the Italian industrial relations system. There is no board-level representation of employees in Italian companies. In terms of employee representation, the Italian system provides for the so-called 'unitary workplace union structure' (*Rappresentanze sindacali unitarie* – RSU), which is the expression of a single-channel model of interest representation at plant level. This unitary workplace union structure is essentially a union body, even if two thirds of its members are elected by the entire workforce and one third are appointed or elected by the union organisations that are party to the national agreements. The trade unions themselves agree the rules governing the operation of the RSU. This institution is normally chaired by the leading figure in the largest union in the workplace. Fisac-Cgil, Fiba-Cisl and Uilca-Uil and the so-called autonomous trade union Fabi are the major trade unions in the financial services sector, and they have members in Allianz subsidiaries in Italy. An industry-level agreement regulates the work of the RSU. In the case of Allianz, a coordinating committee has been set up at enterprise level – not least because of the adoption of the legal form of a European Company. As RSUs are intended to act as the workplace representatives of the trade unions, they are entitled to conclude collective agreements at plant level and to call strike action. Furthermore, they have information and consultation rights provided by national collective agreements and by law. The most important one is the EC Directive 2002/14 establishing a general framework for informing and consulting employees in the European Union, as transposed into Italian law by Legislative Decree of February 2007. This has contributed somewhat to closing the gap of institutionalisation of employee rights, providing a clear definition of the concepts of information and consultation including also aspects such as the timeliness of involvement and the right to develop autonomous proposals.

This varied and sometimes contradictory character of industrial relations, social dialogue and employee involvement/codetermination is reflected in all the company cases in this report. At Elcoteq for example, industrial relations at the time of the establishment of the SE were shaped by very different systems in the three most important countries. While in Finland trade unions were traditionally strong, in Estonia there was essentially no trade union independent from the management. In Finland, union coverage is 94% in metallurgy, while Hungary is characterised by much lower trade union density and a conflict-avoiding approach. The Estonian Metalworkers' Trade Union has as few as 1,200 members nationally, who – according to the opinion of the Hungarian expert of the Elcoteq SE works council – represent the culture and values of the socialist regime. At a time when 3,000 people were employed by Elcoteq in Tallin, only 120 were union members – most of them ethnic Russians. A similar situation has been reported at Elcoteq's Romanian site at Arad. In contrast to this, employee interest representation in Hungary has been stronger and better organised until recently. There has been a trade union at the Hungarian plant since 1998, and a works council operates there too. The local trade union belongs to the federation of Metalworkers' Unions (*Vasas Szakszervezeti Szövetség*) and has a substantial membership (though it has declined recently). The collective agreement, which is negotiated at the company level, is renewed annually and is regarded as being of high quality by Hungarian standards. The relationship between the works council, the trade union and the management is good and cooperative, according to evaluation by the parties involved. During negotiations over redundancy and wages, which sometimes last for several months, management talks to the trade union and the works council together, regardless of the statutory competence of the respective interest organisations.

A company very much influenced by the German tradition of a cooperative corporate culture and strong employee involvement is BASF. At the national level of social dialogue, there is the heterogeneity of interest representation structures so characteristic of Europe, with both the dual model (Germany) and the single (union) channel (UK and Italy). In Germany, there are works councils at each individual BASF group site, as well as a group works council. The BASF SE includes only one Germany production site, Ludwigshafen, where there is only a works council.

At GfK, a stocktaking of national interest representation structures and social dialogue was carried out by company management in the context of the creation of the SE. Looking first at formal structures, it is clear that not all of the countries in which GfK operates had or have employee representation structures or mechanisms for negotiation, and, even where they do, these do not necessarily apply to all sites in a particular country. Material collected by the company and supplemented by interviews indicates that employee representation structures (set up as a direct result of the SE process) exist in Austria, France, Germany, Italy, the Netherlands and Poland. This means that among the five largest countries in terms of employment in GfK, only the UK (the second largest site by number of employees) does not have an employee representative structure. There are works councils in Germany (where there is also a group works council – KBR), the Netherlands, Austria and Poland, while Italy has an RSU (a unitary union representation) in one of the companies and more limited union representation in the other (also developed as a result of the SE).

However, even if there are employee representative structures in these countries, some key issues are not dealt with collectively. In the Netherlands and Poland, pay is dealt with on a purely individual basis. In Italy, there is a company-level agreement linked to the national agreement in one of the companies. In Germany, the country with the largest number of GfK employees, employees are not covered by an industry-level agreement – GfK not being a member of an employers' association – but pay has often been regulated by company-level agreements (*Betriebsvereinbarungen*). These agreements have frequently taken the collectively negotiated agreement for the wholesale and foreign trade sector (*Groß- und Außenhandel*) as their guide for pay increases. However, although there are union members (from the large ver.di union) in GfK in Germany – and it has been possible to organise works stoppages in the company on pay issues – pay and working conditions in GfK in Germany are not collectively negotiated with the union. There are known to be trade union members in Austria (from GPA), France (CFDT) and Italy (Filcams – part of Cgil), but there appears to be no significant trade union membership in any other country. With regard to the quality of social dialogue in GfK, it is clear that in Germany at least both management and employee representatives accept that the culture is one of discussion and mutual respect based on partnership, although it is not without conflict. There is a basic wish on both sides to find a compromise. The situation is similar in Austria. But in some other countries there are greater conflicts, particularly in working with unions. Until the developments around the transformation of the company into an SE started, beginning with the setting up of the SNB, there was no European structure for social dialogue – no European works council, for example. As a result, social dialogue before this period took place only at national level.

Experience of transnational social dialogue and employee cooperation

The sample of companies considered in this report clearly falls into two groups with regard to the forms of transnational social dialogue and employee involvement that existed before the establishment of the SE. While in six companies an EWC had been founded by the mid-1990s through voluntary (Art. 13) agreements, no such institution existed in the remaining four countries.

Table 10: Overview of EWC experience

	Allianz SE	BASF SE	Elcoteq SE	Equens SE	Fresenius SE	GfK SE	Hager SE	MAN SE	Scor SE	Strabag SE
EWC previously	Yes (1996)	Yes (1995)	No	No	Yes (1996)	No	Yes (1996)	Yes (1996)	No	Yes (1996)

Source: authors' own data

According to company representatives who have already been actively involved in the EWC practice, the effectiveness and experience of transnational information and consultation were sometimes quite positive; however some significant shortcomings and deficits were reported – in particular, with regard to consultation.

Representatives of Allianz and BASF report quite positively on the EWC experience. The Allianz EWC was set up in July 1996 on the basis of Art. 13 of the EWC directive. The EWC had mainly served as a European platform and transnational channel for mediating the industrial relations principles that dominated in the parent company. A positive outcome for the interview partners was that the EWC has contributed to the development of a European identity and knowledge. The EWC underpinned transnational social dialogue. The SNB as well as the SE works council are seen as an instrument of continuity of this experience.

Before the conversion of the company into an SE, a so-called 'BASF Europa Dialogue' was introduced in 1995 on a 'voluntary' basis according to Art. 13 of the EWC directive. Two aspects of the BASF Europa Dialogue are particularly striking. First, the German delegation was deliberately limited to four members in order to avoid German dominance of the EWC; secondly, the actors tried very hard to develop joint European strategies and objectives that went far beyond issues of information and consultation. In this way, the BASF EWC contributed significantly to better knowledge, communication and dialogue – not only between employees and management but also between employees on a transnational basis. The positive experience of transnational industrial relations development at BASF resulted from the strong codetermination culture of the company. This is very much influenced by the 'social partnership' approach of the German chemical union federation IG BCE, an approach shared by BASF management.

In contrast to this, representatives of the MAN, Hager, Strabag and Fresenius cases are more critical in their opinions on previous EWC experience.

The MAN EWC was set up in 1996. In contrast with the BASF experience, the MAN forum was dominated by German representatives. It was formed by six members from Germany (representing the group works council, and central works councils at the diesel and trucks branches of the company) and only three non-German members (from Austria and Denmark). Some important European production sites, including those in France and the UK, were excluded from the EWC. This experience of EWC practice very much influenced by one country illustrates a certain approach to Europeanisation. The MAN EWC agreement was negotiated between the management and the German group works council with neither party being very interested at that point in deepening the process of 'Europeanising' employee representation.

The experience of the Hager European Works Council, which was established on the basis of a voluntary company agreement in 1996, is reported as being rather unsatisfactory. In the opinion of the employee representatives, the EWC was a rather weak forum, focused purely on the exchange of

information without a serious consultative role. Only one annual meeting was foreseen for the EWC, which had 17 delegates at the time of conversion into the SE works council in 2007.

However, at the same time, based on the tradition of the specific cross-border company development at Hager since the 1950s, the cooperation between German and French employee representatives was described by the interview partners as mature and positive. There exist stable and reliable channels of communication, exchange of information and opinions, even if there are differences and difficulties between German and French employee representatives and trade unions. This contrasts with the remaining European countries (in particular in southern and central and eastern Europe) where both employee representation at the workplace and trade union density were described by the interview partners as being rather weak. In the CEE countries in particular, social dialogue is difficult to organise since this group includes countries without any formal organisation of employee representation at the workplace.

Strabag, too, had a decade of EWC experience. The SE was set up in 1996, renewed in 2001 with equal representation from Austria and Germany (with four members each) and delegates from Belgium, the Czech Republic, Hungary, the Netherlands and Slovakia). Senior employee representatives described it as a discussion and information body. However, a positive aspect – according to employee representatives – was that even before the SE development process started key actors had known each other quite well for a long period.

At GfK, SCOR, Elcoteq and Equens, no EWC or other form of transnational cooperation or exchange of employees existed before the creation of the SE works council. In the case of SCOR, this was due to the size of the company: with only 800 employees in Europe, the SCOR group did not fall under the EWC directive. At GfK and Equens, there were attempts to establish EWCS as internationalisation gathered pace. However, as described above, this did not lead to the creation of a EWC before the process of establishing a European company started.

Employee involvement in establishing SEs

Negotiating employee involvement

Setting up an SNB proved rather difficult for the companies studied. It took a great deal of effort to compile documentation on the subsidiaries, the number of employees and the existence of local employee representation. The companies had to make sure that no employees could challenge the validity of the SE on the basis that they had not been properly informed. Under the SE directive, companies were required to inform each affected employee of the creation of the SE and to ensure their appropriate representation in the SNB. One worker in one subsidiary was sufficient to entitle a country to participate in the negotiations.

It is notable that there have been so few court actions relating to this provision. The Austrian company Strabag was one company that was subject to court action. Strabag SE was registered in October 2004 as the first SE ever, although the standard requirements for SE registration were not met. An agreement was negotiated with the existing EWC, but this procedure was not in line with the SE legislation concerning employee involvement – in particular, because an EWC is not allowed to act as a substitute for a SNB pursuant to the SE directive. The Austrian trade unions and the Chamber of Labour notified the court in Austria of the unlawful procedure. This resulted in a joint complaint by the Chamber of Labour and by German as well as Belgian trade unions. Finally, Strabag management and the trade unions agreed that the complaint at the Higher Court would be put on hold if an SNB was established.

The constitutive meeting of the SNB took place in November 2005 and negotiations were completed before the six-month deadline in May 2006.

The negotiation process and experiences of SNBs

The requirement to follow the prescriptions of the directive for setting up the SNB led in some cases to a delay before official negotiations with the SNB could start.

The SE directive defines a term of six months, eventually extended to a total of one year, for the negotiation of an agreement on employee involvement. This term seems short, especially compared with the three-year term allowed for negotiating an EWC agreement. However, this short period has not in itself been a major problem in any of the 10 cases analysed for this report. In nine of these cases, negotiations were finished before the end of the six-month term. In the case of SCOR, the negotiation period was extended because management did not want to place negotiations under time pressure, and an agreement was signed after 10 months.

Typically, the management prepared the first draft of the agreement. The SNB either negotiated on this basis or presented an alternative draft. Only in the Strabag case was the initial text for the second negotiation drawn up by the SNB, in the context of a seminar for all SNB members cofinanced by the European Commission and organised by the industry federation the European Federation of Building and Woodworkers (EFBWW) in cooperation with the Austrian Chamber of Labour and the Austrian trade unions.

The negotiations with management were generally led by a smaller negotiation team mandated by the SNB, which then reported back on the provisional results of this negotiation. SCOR was an unusual case because of its intention to create three SEs at the same time: one parent SE and two subsidiaries. It was therefore decided to create a common negotiation committee of 20 people on the employee side. Negotiations were undertaken with this committee.

The employee representatives in the home country were generally well prepared for negotiating an agreement on employee involvement, particularly where there was already employee representation at board level. SNB members who were also members of the supervisory board were well informed about the process and the possibilities of informal contacts with management in advance of the SNB negotiations.

For most of the employee representatives in the SNB the task of negotiating an agreement on employee involvement in an SE was a new experience. A problem for the SNB was often the lack of mutual trust between people who had never met before and had now to act as a coherent body with effective negotiating skills. Another serious problem slowing the internal coordination process was a lack of understanding and of knowledge of the different systems of employee representation and collective bargaining in the various countries. Different industrial relations traditions, national backgrounds and interests of SNB delegates often got in the way of the development of a coherent negotiation position.

Role of external experts and European industry federations

In many cases external union advisors played a crucial role in the process of negotiating employee involvement. Experts cannot always compensate for the structural shortcomings of the SNBs, however, because they seldom have the detailed knowledge of all relevant industrial relation systems in Europe. Most experts concentrate on legal matters, which exclude the ‘foreign’ representatives in the SNB, because the national transposition laws of the SE directive are usually only available in the native language. In such cases negotiations were often not seen as a political process leading to new

achievements, but as a purely legalistic discussion between employee representatives and headquarters management. Representatives or experts of European industry federations are better able to fill this gap in the negotiations, because they always draw attention to the European dimension of the issue and search for European solutions.

The participation of external experts generally did not appear to result in any conflict with management, although in one case it led to a conflict between unions. In most cases, the SNB chose union officials as external experts, either from a European industry federation or from a national union organisation, sometimes with a European mandate. The SNB choices are listed here.

- Allianz – a trade union coordination at European level was set up by UNI-Europa Finance. An expert mandated by UNI was part of the SNB.
- BASF – two of the German members were full-time union officers (the secretary general of the European industry federation EMCEF and the future chairman of the German chemical union federation IG BCE). The negotiating team was assisted by an SE expert from the ETUI.
- Fresenius – there was conflict between the two German trade unions IG BCE and ver.di on the nomination of the German delegates and of the external advisor. It was finally agreed that each union would nominate one external trade union representative as part of the German delegation to the SNB.
- GfK – an SE expert from ETUI was present in the negotiations, and an expert from the union ver. di provided background advice.
- MAN – a union official from IG Metall was responsible for codetermination (he was also union coordinator for MAN and deputy chair of the supervisory board). The EMF mandated the official to be union advisor, and he also chaired the SNB.
- SCOR – the joint negotiation committee was assisted by two experts, one from the accountancy consultancy Syndex, which worked for the French SCOR WC, and a lawyer working for the French union CFDT.
- Strabag – the experts were two representatives of the Austrian trade unions (GPA and GBH) and one representative of the EFBWW, as well as a legal expert paid jointly by the trade unions involved.

Agreement on employee involvement

In no case did one side unilaterally decide to allow negotiations to fail. Theoretically, in such a case, the standard rules for employee involvement would apply automatically, but in the end it would have been up to the shareholders to decide whether to accept them or not. If they had not, the SE would not have been established. This situation is very different from that of an EWC negotiation, where the negotiators on the employee side can be certain that they will get at least the standard rules after three years or if the negotiations fail.

This particular formal procedure certainly gave incentives for both sides to make some mutual concessions during the negotiations. It is therefore not surprising that in each of the 10 cases considered in this report the outcome of the negotiations was a political compromise, depending on specific factors on the management and the employee side.

It is not easy to make a comparison and an assessment of the individual rules laid down in these SE agreements. These rules must always be placed in their context. Without this context, especially the

employer–employee relationship in each company, the formal rules of the agreement are difficult to assess. In these negotiations, the employers' side (especially those law firms that worked as advisors for several companies in SE negotiations) often presented the other sides with existing SE agreements, which they tried to use as a reference. This did not make the negotiations easier, because employee representatives viewed their work as having a pioneering character and possibly serving as a reference for other negotiations.

In all cases the employee representatives generally expected to achieve, with the new possibilities of employee involvement, a kind of EWC 'plus', with better conditions than the pre-existing EWC, together with a possibility of influencing management via the supervisory board or the board of directors. Furthermore, they were keen to implement at least the same standards of information and consultation at the transnational level as are fixed for the national level by the European Directive on information and consultation (Council Directive 2002/14). This refers in particular to the requirement for employees to be fully informed in a timely fashion of relevant business decisions, and to be consulted with the aim of reaching an understanding with the employer on the decision and its consequences.

In the big SEs of German origin, parity in the supervisory board is guaranteed by the SE directive and was not subject to discussion. In some companies, however, management wished to reduce the size of the supervisory board. The employee representatives accepted this only in exchange for concessions in other fields, specifically in relation to the SE works council.

So finally, in most cases, both management and employee representatives were pleased with the final agreement. For management, the signed agreement was generally an acceptable compromise as it was a necessary precondition for the creation of the SE, and also because it was seen as contributing to the creation of a European company identity. The employee representatives were generally satisfied with the agreement, because the codetermination rights in the supervisory board had been secured, and in some cases even improved, and because important rights had been obtained for the SE WC. For the employee representative side, the agreement was also often the result of a compromise between the representatives of different countries and seen an investment in a common European future.

In the case of GfK, part of the final compromise was that the SE works council could also get involved in local issues, but only when there was no local employee representation, although the words 'employee advocate' were removed from the final agreement.

For the trade unions involved, the agreement is generally assessed against four kinds of benchmarks:

- observance of the guidelines of the European industry federation;
- possibilities offered by the national transposition law, particularly the fallback positions;
- comparison with the agreement and practice of the pre-existing EWC;
- comparison with other SE agreements.

In all four areas, most of the agreements are considered as satisfactory.

There were, however, limits to the number of concessions that management was prepared to offer. For the management of the German SEs a transfer of the rights of a German works council to the SE works council was not negotiable. This applies particularly to the codetermination rules that make it impossible for certain decisions to be taken against the vote of the works council. In some cases they have accepted new rules for the SE works council, which – as in the case of Allianz – move in

the direction of ultimate negotiating power for the SE works council. These rights are new and still controversial. It remains to be seen what the SE works council will do with them in practice.

Employee involvement through SE works councils

Characteristics of the works council in SE agreements

Table 11 gives an overview of the size, composition and other features of the SE works councils in the sample of companies discussed in this report.

Table 11: Overview of SE representation bodies

	Allianz SE	BASF SE	Elcoteq SE	Equens SE	Fresenius SE	GfK SE	Hager SE	MAN SE	Scor SE	Strabag SE
Size of the SE works council	37	23	14	5	29	23	20	25	19	18
Number of countries	18	11*	6	2	23**	20	20	9*	9	14
Number of annual meetings	2	3	2	3	1	2	2	2	4	2
Size of select committee	5	3	3	2	7	7	5	9***	2	6
Select committee structure by countries	DE, UK, IT, SK, FR	DE, BE	HU, FI, ES	NL, DE	DE, SE, NL, ES, AT, UK, PL	DE, UK, FR, IT, NL, PL	DE, FR, BE	DE, AT, PL, DK	FR	AT, DE, HU, CZ
Previous EWC	Yes (1996)	Yes (1995)	No	No	Yes (1996)	No	Yes (1996)	Yes (1996)	No	Yes (1996)

Source: authors' own data.
Notes: *Plus one additional guest from Switzerland; ** In practice, only 15 countries; ***Plus additional guests from Switzerland and Turkey and one representative for sales/service organisations in nine other countries

Composition of SE works council and voting rules

All achievements for employees in SE agreements have to be assessed against the standard rules defined as the fallback position in the SE directive and in the national transposition laws, which set out the subjects of negotiations. This comparison with the standard rules can give an insight into the special character of achievements described in the agreements in the situation of a particular company.

As far as the composition of the representative body (the SE works council) is concerned, the following standard rules apply.

- The representative body is composed of employees of the SE and its subsidiaries and establishments in all of the EEA Member States concerned.
- They are elected or appointed by the employees' representatives or, in the absence thereof, by the entire body of employees, in accordance with 'national legislation and/or practice' – in particular, as laid down by the national transposition laws.
- They are elected or appointed in proportion to the number of employees employed in each Member State, by allocating in respect of a Member State one seat per portion of employees employed in that Member State equalling 10%, or a fraction thereof, of the number of employees employed in all the Member States together.

The first important finding is that all 10 SEs of our sample have established an SE works council (in the case of SCOR a common works council for the three SEs). Nine SEs in the sample, of which six are of German origin, have adopted the 'German model' with an SE works council composed exclusively of

employees and a chair elected by the SE works council. Only SCOR has adopted the 'French model', with an SE works council chaired by the employer. There is, however, no difference in practice. SE works councils of the German type also meet the employer in the bilateral meetings and the other SE works councils have the right to organise separate preparatory and follow-up meetings without the presence of the employer.

In six of the 10 cases, the SE works council replaces a previously existing EWC. In the four remaining cases, either the company was too small to reach the threshold of the EWC directive (as in the case of SCOR) or no requests had previously been made by the employee representatives.

All the agreements have included at least the EEA Member States. Some go beyond, including countries such as Switzerland or Turkey. Very often delegates from Switzerland are included as full members (as in the cases of Allianz, BASF, MAN, Strabag) or sometimes as guests without voting rights (MAN). Croatia is included in the Strabag SE works council. A delegate from Turkey is invited as a guest at MAN.

The election or appointing rules are always defined in accordance with national law or practice. In the case of MAN, the SE works council can agree election rules that differ from these principles.

The standard rules have no thresholds, except if the national workforce exceeds 10% of the total workforce. In this case, countries are entitled to one supplementary seat for each 10% or fraction thereof.

Only one SE in the sample (Fresenius) has adopted these standard rules. Most often there is no threshold for representation (Elcoteq, Fresenius, Equens, Hager) or a very low one (five employees with GfK). Some companies have adopted higher thresholds, 100 in the case of Allianz and Strabag, 500 in the case of BASF (but 150 if it is a production site), and no less than 2,500 in the case of MAN. In BASF and MAN, these high thresholds are compensated for by provisions for common representatives of smaller subsidiaries.

Some SEs have defined a maximum size of the SE works council as a whole – for instance, 30 for BASF and 31 for MAN. Most of the SE works councils have between 18 and 29 members. The Allianz SE WC has 37, the Elcoteq SE only 14 and the Equens SE 5 – clearly an exceptional case because it represents only two countries.

Most of the SE agreements give a right to supplementary seats to countries with larger workforces. MAN, Strabag and Fresenius use the 10% thresholds of the standard rules. Other SEs use different rules for supplementary seats, either setting the same figure as for initial representation, as at MAN (where the threshold of 2,500 employees corresponds roughly to 5% of the workforce), or a higher threshold, such as Allianz, BASF or SCOR. Setting a higher threshold has the effect of limiting the number of seats for the countries with the biggest workforce (generally the home country). This limitation of seats is, however, often compensated for by the establishment of voting rights proportional to the number of represented employees and the establishment of a quorum rule for the validity of decisions (BASF, Fresenius, GfK, MAN, SCOR). A quorum rule means that at least half of the members representing half of the voting rights have to be present during the vote (BASF, Fresenius, MAN). In the cases of BASF, MAN and SCOR these voting rules secure a comfortable majority position for the representatives of the home country.

In the case of Fresenius and GfK the double majority rule (which means a majority of both the members of the works council and of the employees they represent) applies only to certain topics:

- election of the select committee and the chairmen;
- the rules of procedure of the SE works council;
- election of the supervisory board members (in Fresenius, they even require a double two-thirds majority);

SE works councils members (and their deputies) are generally appointed for four or five years.

Chair and select committee

The standard rules of the SE directive stipulate that 'where its size so warrants, the representative body shall elect a select committee among its members, comprising at most three members'.

All the SE works councils in the sample considered for this report have elected such a select committee, generally with at least three members: the chair and two deputy chairs. Equens is an exception, with two members. The German companies have gone beyond this minimal number: Hager (five), Allianz (five), Strabag (six), Fresenius (seven), GfK (seven) and MAN (nine). Those opting for a small select committee generally give preference to consultation with the whole SE works council, which in exchange is entitled to more frequent meetings (as in the cases of SCOR and BASF). Those opting for a larger select committee have often delegated certain consultation rights to the committee, in particular in the case of 'exceptional circumstances' (see below).

Frequency of meetings

The standard rules foresee one annual meeting of the representative body (the SE works council). All the SE agreements of our sample, except Fresenius, go beyond this and allow at least two ordinary meetings, although for GfK this is only guaranteed for two years. Equens has three and SCOR four meetings a year.

The standard rules of the directive foresee the possibility of extraordinary meetings, of either the representative body or the select committee, in 'exceptional circumstances'. All the SE agreements make provisions for such meetings (see below). The Allianz agreement limits extraordinary meetings to two in any one calendar year.

Where the select committee has German members, the frequency of SC meetings is generally fixed in the SE agreement. In the Fresenius agreement it is set at three times a year. At GfK the select committee will meet four times a year in the first two years and at least three times a year thereafter. At MAN, the select committee meets six times a year, but 'extraordinary meetings are always possible'.

Working facilities and training

The standard rules of the SE directive make a number of stipulations.

- The costs of the representative body are borne by the SE, which provides the body's members with the financial and material resources they need to perform their duties in an appropriate manner.
- In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings, interpretation facilities, and the accommodation and travelling expenses of members of the representative body and the select committee.
- The members of the representative body are entitled to time off for training without loss of wages.

These provisions are applied in all of the SE agreements considered in this report.

In most of the agreements, time off for SE WC members is not precisely specified. At SCOR, each SE works council member has up to 100 hours a year, and 120 hours for the secretary. (Time spent in and travelling to meetings is not counted as part of this time off but rather as ordinary working hours.)

Members of the SCORSE works councils may freely meet the national employee representation bodies in each of the countries concerned and give them the information obtained. They have, of course, to respect the principle of confidentiality. In Allianz, the SE works council is also entitled to inform employees in non-European countries if they will be affected by any decisions taken by the Allianz SE.

In the case of SCOR, the SE works council has an annual budget, on top of the meeting, interpretation, accommodation and travel costs borne by the company. Its amount is calculated in agreement with management. For the first year in operation, the budget was fixed at €40,000. The SE works council's experts are paid out of its budget.

At MAN and BASF, the select committee has the right to be assisted by a full-time advisor and/or a secretary.

The translation of documents is sometimes limited to translation into English (as at BASF and SCOR). At times documents are translated only 'on request'. Minutes of meetings are, however, nearly always translated into all necessary languages.

The SE works council generally has a dedicated homepage on the company intranet for publishing its opinions and summaries of meetings.

Most of the agreements do not define any specific rights to training, but only state, as in the SCOR agreement, that SE works council members are entitled to training leave 'according to the conditions provided by the applicable laws and/or national practices'.

Presence of experts and union officials

The standard rules of the SE directive state that:

- the representative body or the select committee may be assisted by experts of its choice;
- Member States may limit funding to cover one expert only.

Many EU Member States have in their transposition of the directive limited the number of experts paid for by the company to one. The SE agreements seldom include such sharp limitations. Many SEs include the right to select experts without limitation of numbers.

In some cases (as at Allianz, BASF, Fresenius, GfK and MAN) the possibility for union officials to attend the meetings is explicitly mentioned. At BASF, the secretary general of the European Mine, Chemicals and Energy Workers Federation (EMCEF) regularly participates as a guest in the meetings. At Allianz and Fresenius, the SE agreements stipulate the presence of two representatives of European trade unions at every meeting of the SE works council. At Fresenius this comes on top of the presence of two other external or internal experts, such as those from the ETUI and the Hans Böckler Foundation, who regularly attend meetings of the SE works council. At GfK, there is no permanent right for trade union officials to take part in the meetings, but the SE works council may 'invite a representative of European trade union organisations as a guest with a right to speak'.

In most of the SEs, the employee board-level representatives participate as guests in the SE works council meetings, unless they already are members of the works council. In the cases of Allianz, MAN and BASF, they are in practice full-time external union officers.

At MAN, the chairman can invite other representatives to the meetings of the select committee, including the union officials on the supervisory board,.

Travel costs for experts and union officials are generally borne by the company.

General information and consultation rights

Under the standard rules, the competence and powers of the representative body are governed by the following rules.

- The competence of the representative body is limited to questions that concern the SE itself (and any of its subsidiaries or establishments situated in another Member State) or that exceed the powers of the decision-making organs in a single Member State.
- The representative body has the right to be informed and consulted on the basis of regular reports on the progress of the business of the SE and its prospects.
- The appropriate body within the SE shall provide the representative body with the agenda for meetings of the administrative, or the management and supervisory, organ and with copies of all documents submitted to the general meeting of its shareholders.

In addition, standard rules stipulate that the annual meeting shall deal with the following items:

- the structure of the SE;
- the economic and financial situation;
- the probable development of the business and of production and sales;
- the situation and probable trend of employment;
- investments;
- substantial changes concerning organisation;
- introduction of new working methods or production processes;
- transfers of production;
- mergers;
- cutbacks or closures of undertakings, establishments or important parts thereof;
- collective redundancies.

Most of the SE agreements repeat the list of information rights contained in the standard rules. Some add other specific items, such as:

- issues of health and safety at the workplace (as at BASF and Strabag);
- environmental issues (BASF, Strabag);
- the principles governing remuneration policy (SCOR).

In many agreements, these information and consultation rights are limited to 'cross-border' matters (generally defined as matters concerning more than one country).

At BASF, in a special document annexed to the SE agreement, cross-border matters are defined as matters that concern:

- more than 50 employees in at least two countries;
- at least 15 employees in each country;
- movement of employment from one to another European country.

Consultation under 'exceptional circumstances'

The standard rules stipulate that '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 has the right to be informed'.

- The representative body or, where it so decides – in particular for reasons of urgency, the select committee, has the right to meet at its request the appropriate body within the SE or any more appropriate level of management.
- Where the competent organ decides not to act in accordance with the opinion expressed by the represntative body, the latter has the right to a further meeting with the appropriate body 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 those employees who are directly concerned by the measures in question also have the right to participate.
- All SE agreements contain supplementary consultation rights in the case of 'exceptional circumstances'. These rights are in general defined as in the standard ruling of the directive.

In general, extraordinary meetings are called by the chairman of the select committee after consultation with management.

Some agreements give supplementary or more precise conditions for extraordinary meetings in the case of 'exceptional circumstances'.

The Fresenius agreement gives a definition of mass redundancies, which requires that the SE works council be informed and consulted. The SE works council must be brought in in the case of dismissals of workers in one country over a period of 30 days, where that case involves:

- at least 50 workers (or 20%) if fewer than 500 workers are employed;
- at least 100 (or 15%) for between 500 and 1,000 employees;
- at least 150 (or 10%) for between 1,000 and 3,000 employees;
- at least 300 (or 7.5%) for between 3,000 and 10,000 employees.

At BASF, in the case of 'extraordinary circumstances' involving more than 50 employees in at least two countries and at least 15 employees in each country, an extraordinary meeting can be organised at

the request of the select committee. Only the select committee and the representatives of the countries concerned attend extraordinary meetings.

At MAN, in the case of 'extraordinary circumstances' that concern employees in at least two countries, the SE chairman can call an extraordinary meeting (as can at least 10% of the members from at least two countries).

At SCOR, four of the SE works council members representing at least two different countries can call an extraordinary meeting on the basis of a 'justified request'. Alternatively, management can take the initiative to call such a meeting.

In the event of urgency, meetings may be held by videoconference. In case of a public offer to buy, sell, exchange or buy back, the management of the relevant SE or SEs will inform the SE works councils as soon as the bid is made public and will arrange a meeting with the SE works council within eight days of publication of the offer.

Concerning the timely character of this information, many of the agreements use formulas that seem to be inspired by the revision of the EWC directive.

- At Hager, the SE works council has to be informed and consulted 'in due time', so that management is able to take into account the opinion of the SE works councils before its final decision.
- At Allianz, the information and consultation by the management 'shall occur early enough so that management can take the point of view of the SE works council into account when coming to a decision'.
- At BASF, the 'timing, form and content of the information shall enable the BASF Europa *Betriebsrat* [works council] to analyse and discuss the expected impact on BASF employees and, if necessary, to consult with their representatives from those countries which are not represented in the BASF Europa Betriebsrat, with the aim of reaching an agreement with the company after comprehensive and final deliberations'.
- At GfK 'The time, form and content [of information, consultation and hearings] should allow the GfK SE works council to review the impact to be expected on workers of the GfK Group, to consult with and to be heard by the management of GfK SE, with the aim of reaching an agreement after a comprehensive discussion.'
- At MAN, employee representatives or employees not directly represented in the SE works council and who are concerned by the decisions, are entitled to consult with the SE works council chairman and to ask for further written information from the management.

Certain agreements (as at BASF and SCOR) give the SE works council the right to be informed in advance of the national representative bodies. The BASF agreement states that 'in the event that pursuant to national provisions of law the management of the company is required to inform national employee representative bodies prior to this point in time, the information and consultation of the "BASF Europa Betriebsrat" shall take place ... no later than within three days thereafter". In these cases, the consultation procedures take place simultaneously.

As in the standard ruling of the directive, in some agreements (those of MAN and Strabag, for instance), a further round of consultation is stipulated if management decides not to follow the opinion of the SE works council.

- In the BASF agreement, this second round of consultation is conceived as an exchange of written statements. The SE works council must submit its opinion in writing to the management within one week of the relevant meeting. 'The management of BASF SE shall take into account the content of the comments for its assessment in the course of the decision-making process and shall inform the Executive Committee in writing, prior to implementing the measure...'
- The SCOR agreement foresees a further written exchange, but only of information: 'If an event impacts on one or more of the SEs, the members of the SE works council may request specific information thereon from the management. The request must be made by a majority of the members of the SE works council'.

Towards negotiation rights?

Some SE agreements give the SE works council rights that come close to negotiation rights.

In the MAN SE agreement, it is stipulated that common opinions resulting from this consultation procedure must be written into the minutes and signed by both sides.

The Allianz SE works council has the right to take initiatives, together with management, on cross-border matters, with the goal of defining guidelines in the areas of equal opportunities, work and health protection, data protection and training and education policies.

The Fresenius SE works council has the right to launch initiatives to define guidelines on certain matters such as corporate social responsibility (CSR) or health and safety at work. The SE agreement states that these initiatives must be coordinated with management.

The GfK agreement states that 'the GfK SE works council and the management of GfK SE may take joint initiatives on cross-border topics'. It goes on to say that 'the aim is to develop principles for the following or similar areas: (i) equal opportunity and antidiscrimination, (ii) data protection, and (iii) safety and health at work' although it does note that these initiatives are voluntary and that 'the GfK SE works council does not have any right to demand an initiative.'

Comparison with previous EWCs

The standard rules of the SE directive are not the only benchmark for evaluating SE agreements. They must also be compared with previous EWC agreements and their implementation. As the practice of EWCs can only be compared with the practice of SE works councils, we will here limit ourselves to the comparison of the agreements.

First, the installation of an SE works councils represents enormous progress for the four cases where there was previously no EWC (Elcoteq, Equens, GfK and SCOR). For the other six cases (Allianz, BASF, Fresenius, Hager, MAN and Strabag), the comparison between the EWC agreement and the SE works council agreement favours the SE works council. In addition, in all these cases there was also a Europeanisation of employee board-level representation, which previously did not exist.

The progress can be seen in the following areas.

- The size of the body has increased (as at BASF, Fresenius, MAN and Strabag).
- A select committee has been introduced (Fresenius and MAN).
- The size of the select committee has been increased (BASF and MAN).

- Meetings are now more frequent (BASF and MAN).
- The possibility for extraordinary meetings has been added (MAN).
- A full-time advisor has been appointed (MAN).
- The right to take initiatives with the aim of coming to agreements has been included (Allianz and Fresenius).

In all six cases the information/consultation rights as well as the material resources have been expanded and are specified in more detail and in a more binding fashion by the SE works council than in the EWC.

Experience of working in SE works councils

All SE works councils have only limited experience, having existed for only one year in the case of GfK and MAN and up to five years in the case of Elcoteq. As a general rule, it seems that where negotiations on a SE works council have been difficult and characterised by conflicts, its operation has also tended to be difficult and conflictory. Where negotiations have been more consensual, the SE works council's operation has also tended to be so. In several cases – as in Allianz, BASF, Fresenius and MAN – this may be due to the SE works council's having a strong German influence (in terms of number of employees) and hence a greater culture of codetermination. In most cases, this codetermination culture had also influenced the climate in the EWCs that had been previously set up in these four companies, despite the EWCs being far from perfect and their experience being assessed in very different ways.

We do not find any major difficulties in the implementation of the SE agreement in these four companies. Of course, most of them have gone through moments of restructuring, which –as 'exceptional circumstances' – have led to extraordinary SE works council meetings. But generally these restructurings have been undertaken without substantial compulsory redundancies. The management in these four companies maintained a socially responsible approach to restructuring despite the general economic downturn.

As many previous experiences of EWCs show, differences in industrial relations culture continue to affect the relationships within the SE works councils. One example is the difference between the codetermination cultures in Germany and Austria, and the more conflict-orientated approaches in – for instance – France. Such cultural differences have created some tension between employee representatives at MAN and Hager, for instance. However, as all the interview partners explained, lessons have been learned and the issue of transparency is now of particular concern for the union coordinators in these companies.

Many of the SE works councils are still in the phase of mutual learning and confidence building. The interventions of outside experts are important in this phase. For instance, experts from the ETUI have played an important role in a training course for the SE works council at GfK. There are similar initiatives in other SE works councils.

Other SE works councils are seeking fields of activity that go beyond their legal role of information and consultation. In the SE agreements of Allianz and Fresenius, the SE works council is formally granted the right to take initiatives, which means that this role might be expanded in the direction of transnational negotiation. The SE works at MAN is pursuing the same path and is in the process of negotiating an international framework agreement in cooperation with the International Metalworkers' Federation (IMF).

The experiences referred to above contrast with those of two other SEs in the sample: Strabag and Elcoteq. Strabag was the first SE to be set up, and its agreement was contested in the courts (see above). Finally the company agreed to renegotiate, and the result was positively assessed by the employee representatives. This case illustrates very clearly the tensions between national approaches and Europeanisation, in terms of both corporate culture and employee involvement. During the past four years Strabag has, however, made remarkable progress in both areas. In particular, the SE works council has developed a mode of communication and coordination and a joint approach that is regarded as positive and effective.

The experience of Elcoteq is much more negative. From the beginning there were tensions not only between central management and the home country employee representatives, but also between the latter and the employee representatives from the other countries. In its first phase, the SE works council was chaired by a trade unionist from Finland and there was a common cultural background and a good relationship with the Finnish management. While there certainly was a home country influence, there was no clear home country dominance. After a series of restructurings and plant closures, employment shifted to eastern Europe and outside Europe. In Europe, employment is now concentrated in Hungary; as a consequence, the SE works council is now chaired by a trade unionist from Hungary. At the same time, the headquarters moved from Finland to Luxembourg. These instabilities have also destabilised the relationship between management and the SE works council. The distance, both in the literal and the symbolic sense, between employee interest representation and management has grown, although the human resources (HR) manager is Hungarian. At the formal level, management give information in compliance with the requirements of the SNB agreement and promises have been made to change the content of the work of the SE works council, including language and financial training for its members. But it has proved impossible to establish stable relationships between the SE works council members in Hungary and those in Finland and Estonia. These problems have been aggravated by internal conflict within the Hungarian works council. So this case can be considered an example of bad practice, although its deficiencies cannot be attributed to the SE structure.

SE works councils and national interest representation bodies

Lack of analysis of the relationship between the European and the national employee representation bodies is generally considered a major research deficit. In the present study, this was one of the questions that proved difficult to analyse. Of course, most employee representatives stressed the added value of an SE works council in gaining access to strategic information and to central management, in particular for those employee representatives outside the SE home country. But little is known about the use of this added value in the everyday practice of national and local interest representation.

In some cases the research uncovered a role for SE works councils – labelled 'employee advocate', which goes beyond the role described in the SE agreements. This means that the SE works council can act on behalf of those who have no interest representation, or only weak representation. 'No or weak interest representation' can mean that in a subsidiary there is no legal or recognised representation body, as is often the case in subsidiaries in the UK or in eastern Europe (but not only there). It can also mean that representation bodies exist locally, but that there is no national coordination between them, either because of the lack of legal provisions or a lack of interest on the part of the local employee representatives. Finally, it can also mean a relative lack of power on the part of the local interest representation compared with that of the interest representation in the SE's home country. All these forms of imbalance can be observed in the sample of SEs considered here. There are also some examples where the SE works council members have been able to 'borrow' from their established relationships

with management in the home country in order to assist employees or employee representatives in a situation of conflict with local management. Such advocate situations were most frequent in SEs of German origin. For example, at GfK the steering committee used its right to take up issues in areas where no employee representation existed in order to raise problems in the Baltic States with the regional manager (based in Austria) and to achieve improvements.

A more institutionalised form of this assistance is found in the BASF case, where the SE agreement has perpetuated the practice of 'country meetings', which have been added to the EWC meetings since 2003. These are national meetings between the national member(s) of the SE works council and employee representatives of those companies in a given country that are not directly represented in the SE works council. They are organised for the purposes of preparing for and following the SE works council meetings. If a meeting is organised as a bilateral meeting with the national management, the head of the HR department of BASF SE also participates. Although the SE agreement stipulates that 'such meetings shall not constitute consultation and decision-making bodies in national matters', they are particularly useful in countries where there is no legal or collective institution for coordinating between between employee representatives of different establishments of the same company or group. In BASF, such meetings have been organised in Belgium, Italy, the Netherlands, Spain and the UK. They have also been organised in France, despite the pre-existing legal prerequisite for national coordination in this country.

Employee representation at board level

Common patterns and differences

It is a basic principle of the SE directive that good corporate governance should include a proper presence and participation of employee representatives at board level. This principle has guided the directive on employee involvement in the SE and must be implemented in all Member States regardless of whether or not a tradition or culture of board-level representation exists in the country.

However, at the same time, EU legislation on the European Company respects the specificity of companies' specific cultures, institutional practice and experience of good governance. The SE directive therefore tries to safeguard pre-existing practice if the social partners at company level agree on this.

Regardless of their national background, corporate governance structure (whether one or two tier) and previous practice of employee participation/codetermination, all 10 cases analysed in this study indicate that board-level participation of employees was an important aspect of the negotiation process and the respective solutions developed in the context of SE formation.

A clear example of this is SCOR, where the monistic structure of corporate governance remained untouched in the context of SE creation. However, as in the French SCOR SA, the board of directors (*conseil d'administration*) continues to have an employee representative after the creation of the SE.

Even in those cases where employees are not represented in the boardroom (that is, Elcoteq, Equens and Hager), the respective SE agreements were based on mutual consent and often agreements on information, consultation and other issues that clearly go beyond the standard rules of the SE directive.

At Elcoteq and Equens employee representatives have received some compensation for not receiving a place on the administrative board. At Elcoteq the SE works council is informed and consulted by management on meeting agendas beforehand, and on all decisions to be taken. In the case of Equens,

employees have negotiated an SE agreement that clearly goes beyond the standard rules on a number of items (information and consultation, dispute regulation, number of annual meetings, resources etc.).

Table 12: Board-level participation

	Allianz SE	BASF SE	Elcoteq SE	Equens SE	Fresenius SE	GfK SE	Hager SE	MAN SE	Scor SE	Strabag SE
Corporate governance system	Two-tier	Two-tier	One-tier	Two-tier	Two-tier	Two-tier	Two-tier	Two-tier	One-tier	Two-tier
Employee participation	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes*	Yes
Size of supervisory board	12	12	n.a.	8	12	10	8	16	*	10
Number of employee representatives	6	6	-	-	6	4	-	8	1*	5
Countries represented by employees	DE, FR, UK	DE, BE	n.a.	n.a.	DE, AT, IT	DE,UK, NL	n.a.	DE, AT, PL	FR	DE, AT, HU, CZ

Source: authors' own data, based on case study analysis
Note: *One employee sits on the board of the company.

In the case of Hager, the issue of employee participation and codetermination was a matter of differing interests within the SNB, with the French employee representatives and trade unions being rather critical on this question. This led finally to an agreement without employee participation, offset by a number of advances on information and consultation and other aspects.

With regard to the effects of existing national participation and codetermination rights (as in Germany) and the thesis that SE creation partly stems from the aim to 'freeze' or even cut back employee participation, it should be stressed that there is no case in our sample where the management tried to switch from a two-tier to a one-tier structure of corporate governance.

However, what has happened in nearly every case has been an adjustment in the size and composition of employee representation at board level, as the following section will illustrate.

Number, composition and nomination of employee representatives

Allianz, BASF, MAN and Fresenius are all cases of companies headquartered in Germany that in the context of SE formation altered their supervisory boards and the composition of board membership. All companies are characterised by equal participation rights of employees on the supervisory board and employee representatives who are not only elected by the SE works council but are also – following national practice in Germany as well as other countries, such as Italy – nominated by trade unions.

Under the terms of the BASF agreement, there are six employee board members formally appointed by the SE works council: five from Germany (of whom three are employees of the company and two are representatives of the German chemical union federation IG BCE) and one 'representative of a BASF Group company outside of Germany nominated in accordance with the number of employees', who must be an employee of a BASF Group company. Currently, the non-German employee representative comes from Belgium and is a full-time union delegate at the Antwerp site as well as the deputy chair of the SE works council.

All four in-house board-level representatives are also members of the SE works council. Two of them – the German chair and the Belgium deputy chair – are also members of the select committee. The two

union officials on the board are 'invited guests' at the meetings of the SE works council and the select committee.

At BASF, Fresenius, MAN and Allianz – also characterised by equal representation of shareholders and employees – the SE formation was accompanied by a reduction in seats of the supervisory board.

In the 'old' BASF AG, employees and union officials had seats on the supervisory board on a parity base before the transformation to an SE. This arrangement has continued into the SE. However, the size of the supervisory board has been reduced from 20 to 12. In the AG supervisory board, three of the 10 employee representatives were external union officials, but now there are only two. Of the in-house employee board members, two came from other companies of the BASF group that are outside the new SE. One seat was formerly reserved for the representation of managerial staff. Now, with the reduction in seats, the managerial staff is no longer entitled to separate representation. In the old supervisory board there were four representatives of the Ludwigshafen WC, but the number has now been reduced to three, and the fourth seat has been given to a representative from Belgium.

The size of the Fresenius supervisory board was maintained at 12 seats (originally the SNB had called for a size of 16 or 18 seats), of which six are taken by employee representatives. A major difference compared to the previous supervisory board is its Europeanisation and the representation of the European workforce by elected employee representatives. The six members are directly elected by the SE works council. With an Italian and Austrian member in the SE supervisory board, the employees' side has gained broader European representation. The Fresenius supervisory board is also characterised by a mix of employee representatives elected by the SE works council and members nominated by trade unions.

In the old MAN AG, employees and union officials had seats on the supervisory board on a parity basis before the transformation to an SE, and they continue to have them. However, the size of the supervisory board has been reduced from 20 to 16. Parity of employee representation has been maintained. Under the terms of the MAN agreement, six of the eight employee board members are employees of the company, and the other two are external representatives of the trade unions.

Apart from the six German employee and trade union representatives on the MAN supervisory board, there are two representatives from other countries: the chairman of the central works council of MAN Trucks in Austria and a trade union delegate/company employee representative from Poland. The MAN agreement also stipulates that after the first two years, the six in-house employee board representatives will formally be elected by the SE works council in proportion to the respective workforces in the different countries. This vote will be by simple majority of the voting rights of the members of the SE works council who vote; these members must, however, represent the absolute majority of the entire workforce in all countries. The candidates for this election will be nominated by the employee representation body at the highest level in each country; in Germany, they will be elected by the members of the group works council and the chairman of the committee of managerial staff (*Sprecherauschuss*), with each member having voting rights in proportion to the number of employees they represent. The two full-time union representatives will be nominated by the national union mandated by the EMF, after coordination with the other unions present in the MAN subsidiaries. (The EMF custom is to mandate the union where the headquarters of the company or the majority of the workforce is located, which is presently Germany; hence, the union is IG Metall.) All six in-house board representatives are also members of the SE works council. Five are also members of the SC. The two union officials on board are 'invited guests' at the meetings of the SE works council and the select committee.

In the case of Allianz, the size of the supervisory board has been reduced from 20 to 12 members. Thus, only six employee representatives sit on the supervisory board. The distribution of the seats is determined as follows: four seats for Germany, one seat for France and another for the UK. The German delegation includes a representative from the European industry federation, UNI-Europa Finance. From the point of view of the non-German members of the supervisory board (and of the SE works council members) representation of employees on the Allianz supervisory board is clearly a new dimension of the Europeanisation of corporate governance; in addition, there has also been dissatisfaction about the reduction in seats. From the point of view of employee representatives, the Europeanisation of the company is expressed in the multicultural composition of the supervisory board to only a very modest degree, and a larger board and employee delegation would have made it possible to reflect the European structure of the workforce much better.

The GfK case is an example of a European Company where the supervisory board has been enlarged in the context of establishing the SE. It should be noted here that employees have one third of the seats rather than equal representation on the GfK board. Whereas the size of the board before the SE creation was nine, with three employee representatives, the SE agreement foresees a new supervisory board of 10 members, including four employee representatives. As described in greater detail in the case study, this part of the agreement had to be legally confirmed as the company's lawyers were concerned that it might not be legal because the board was not divisible by three. To take account of this, following discussions with the works council, management agreed to take the issue to court to get a definitive judgement. During this period, the employees agreed to give up their right to a fourth seat on the supervisory board. After the Regional Court confirmed the legality of this course of action in February 2010, the general meeting of shareholders of GfK was able to confirm a fourth seat to the employees. Under the terms of the agreement, the employee representatives on the supervisory board are elected by the SE works council from among the members of the select committee. The current situation is that there are two members from Germany (there had previously been only one German member before the overall number of members was increased to four) and one each from the UK and the Netherlands.

At SCOR – the only case of employee participation in management boards in our sample – the board of directors consists of 15 directors plus one non-voting director. They are appointed by the assembly of shareholders. As before, the employee director on the board is elected by the SCOR group employees worldwide (and then formally also appointed by the shareholder assembly). One further employee representative, not called director, has been added without voting rights. He is appointed by the SE works council. The French works council continues to be represented by two representatives, also not called directors and without voting rights.

Practical experience of board-level participation

Although the work within the supervisory boards is basically the same as before the SE formation, the increased internationalisation has had some effects on the work experience as the following cases illustrate.

The experience of Fresenius shows that the core work areas of the SE supervisory board remain the same as under the previous legal form of the AG. Similar topics are discussed, and the SE supervisory board operates under the same legal provisions as did the previous AG. A trade union representative mentioned that the nature of internal discussions among the employee side supervisory board members has changed with the Europeanisation of its members and the presence of national interests, language barriers and communication problems. The representative also pointed out that supervisory board

members could not meet as spontaneously as before to discuss urgent matters due to geographical distance – between Italy and Germany, for instance.

At BASF, the Board of Executive Directors reports regularly to the supervisory board on strategic planning, business development, risks and risk management. Where required by the statutes of BASF SE, the Board of Executive Directors must have the approval of the supervisory board for certain transactions before they are concluded. Such cases include:

- the acquisition and disposal of enterprises and parts of enterprises;
- the issuing of bonds or comparable financial instruments if the amount of the issue in an individual case exceeds 3% of the equity of the BASF Group.

In 2008, the BASF supervisory board discussed the following topics (among others) at their full board meetings, among others:

- the impact of the economic crisis and the crisis management measures;
- the integration of the Ciba businesses acquired following the successfuf takeover bid;
- plant biotechnology;
- the new compensation system to conform with the German Act on the Appropriateness of Management Board Remuneration.

The BASF supervisory board has established three committees. The first is a Personnel Committee, whose duties include preparing the appointment, by the supervisory board, of members of the Board of Executive Directors and monitoring the compensation system for members of the Board of Executive Directors. The second is an Audit Committee, which prepares the resolutions of the supervisory board for the approval of the financial statements and is responsible for monitoring the financial reporting process, the internal control system, the risk management system and the internal auditing system; this committee is also responsible for compliance issues. Both these committees consist of four members with parity representation of shareholders and employees. Finally, there is also a Nomination Committee', which prepares the proposals for supervisory board members to be elected at the annual meeting. The members of the Nomination Committee are members of the supervisory board, elected at the annual meeting.

The supervisory board of MAN AG had five regular meetings in 2009 before the conversion into an SE. Since then, the SB of MAN SE has held four meetings. At the full meetings of the supervisory board, the following topics were discussed:

- developments relating to orders, earnings and employment – in particular, the effects of the global financial crisis.
- key strategic projects – in particular, investments and divestments.

In 2009, the supervisory board also focused on compliance issues after allegations of corruption were made against MAN managers in May 2009.

Art 48 (1) of the SE Regulation foresees that the statute (*Satzung*) of an SE must list the types of transactions that require the authorisation of the supervisory board. In the case of MAN SE, the transactions requiring consent (*zustimmungspflichtige Geschäfte*), listed in article 11.1 of the statute, are the following:

- the acquisition and disposal of shareholdings in companies, establishments or parts thereof if the value exceeds limits set by the supervisory board;
- the conclusion of affiliation agreements (*Unternehmensverträge*).

These transactions are the same as those contained in the rules of procedure (*Geschäftsordnung*) for the supervisory board of the former MAN AG.

The supervisory board of MAN SE has established two committees, each with three representatives of the shareholders and three of the employees. The first is a 'presiding committee', which combines the tasks of the 'standing committee' and the 'personnel and nomination committee' of the former MAN AG, and which prepares the supervisory board resolutions. A second committee is the 'audit committee', which deals with financial reporting and the reports submitted by the auditors. Certain decision-making powers have been transferred to these committees.

The presiding committee met three times, and the audit committee of MAN AG and MAN SE met 12 times in 2009. The audit committee also discussed current business developments, in particular the cost-saving programme at MAN Trucks, as well as measures to improve the compliance system within the MAN Group.

In contrast to the examples mentioned above, the GfK supervisory board features a minority representation of employees. The supervisory board meets at least five times a year and more often if required. As well as employees being full members of the board, employee representatives are members of the 'presidial committee', which deals with urgent issues between supervisory board meetings, the 'personnel committee' and the 'audit committee'. The supervisory board meetings are in English, and as the employee representatives all speak the language they are able to take full part in the meetings.

Europeanisation of board-level representation

All companies in which an employee representation at supervisory board level is foreseen in the context of SE formation have also negotiated the participation of employees from other European countries, as shown in Table 13.

Table 13: Europeanisation of board-level representation in SEs

	Allianz	BASF	Fresenius	GfK	MAN	Strabag
Number of employee representatives	6	6	6	4	8	5
Representatives from other countries	2 (UK, FR)	1 (BE)	2 (AT, IT)	2 (NL, UK)	2 (AT, PL)	4 (DE, HU, CZ)

Source: authors' own data

Strabag is one case where the internationalisation of employee representation at board level was a rather contested issue. This case also illustrates the dimension of time and learning: even before they had begun negotiating the SE agreement, the Austrian SNB members anticipated that Strabag management would not agree to having a German trade union member on the board. The SNB therefore developed an alternative proposal, which eventually passed almost unchanged into the SE agreement: that the Austrian members of the SE works council, in collaboration with the other SE works council members, would delegate employee representatives to the supervisory board by a 'binding nomination' (*bindende Nominierung*). According to this arrangement, Austrian members would continue to nominate supervisory board members and be supported by the other SE works council members. However, with the positive experience of employee participation at board level and the ongoing internationalisation

of the company, the revised agreement concluded in 2009 included a significant Europeanisation of board-level employee representation: the employee representatives today come from four different countries (Austria, the Czech Republic, Germany and Hungary), with only one Austrian representative.

The quantitative dimension of board-level representation (that is, how many countries are represented by how many seats) is only one dimension of the Europeanisation of board levels. Another, even more important, dimension is the quality of this Europeanisation – the degree to which representatives develop an understanding that they exercise a 'European mandate', rather than representing the interests of employees from a specific country or a single establishment. Here, the findings from the case study analysis show that active involvement seems to be crucial for developing this broader perspective of representation of European interests; this involvement is required both in supervisory boards and in other institutions of transnational cooperation and dialogue inside and outside the company (for instance, in European industry federations).

The Europeanisation of board-level representation of employees was assessed as very positive by representatives of all companies analysed in this report. For example, at GfK, those employee representatives who have been members for some years believe that the employee representatives are treated with more respect and their opinions are listened to more than in the past. This, in their view, has been a long process, which began before the transformation into an SE, but the Europeanisation of the employee side has also had a positive impact. The non-German members who were not involved in the past feel that their opinions are sought and taken seriously and that they have an opportunity to influence decisions. This positive view is shared by management, who emphasise that it would be entirely wrong to characterise the meetings as a clash between the views of the shareholder and the employee representatives.

Another example is that of Fresenius. A supervisory board member from the employee side at Fresenius referred to his function as an international employee representative rather than purely a European representative. Although elected by the European employee representation body (the SE works council), he has participated in discussions and decisions in the supervisory board on matters with a distinctively global perspective and hence of concern to the entire global workforce of Fresenius SE. In discussions on, for example, working conditions and wages in China and Vietnam he also represents the employees' side.

Allianz presents another example. Here, with the active involvement of European trade unions, employee representatives are trying to develop a joint declaration on social dialogue at the European level, which includes defining principles to be applied in the case of restructuring processes. This process exemplifies a tendency towards the development of a European identity.

As these examples show, the role of actors at the European level is important in this context both for developing European perspectives and for supporting EU-wide solutions and approaches. However, the EU level of support and competencies is still rather poorly developed. A fresh approach has been the establishment of a European Worker Participation Competence Centre (EWPC), based at the ETUI in Brussels. This centre is a fund, which provides support for employee representatives at board level in European Companies (such as special training sessions, seminars, advice, topical research and publications). The fund is financed out of the attendance fees of employee members on the supervisory boards of SEs, as in the case of GfK, where the employee representatives on the supervisory board have signed a statement that they will transfer the bulk of their fees as supervisory board members to the EWPC.

The GfK example shows that many employee representatives in the supervisory boards of European companies are taking their European mandates very seriously. This also points to a sense of a clear added value of European social dialogue, something stressed not only by the employees but also by the GfK management side. For management, GfK's becoming an SE has meant that the company is both required and able to be more international – something that the company strongly welcomes. The employee representatives in Germany also consider that their position has been strengthened through the change. As one commented, it has 'brought us (the German works council) further forward'. Employee representatives from outside Germany are also positive, drawing attention to the greater strength now felt by the employee representatives in the smaller countries such as in the Baltic and Nordic states, and welcoming the fact that everyone now has a chance to contribute. In terms of changes to employee representation at national level, the transformation into an SE has led to the establishment of a works council in Poland and has also helped to extend employee/union representation in those companies in Italy that previously had none.

It is more difficult to establish whether this has had an impact in creating a European identity for the workforce, either in Germany or in other countries. Outside Germany, one respondent said that the process had clearly made the company more European, while another said that progress had been made but this effect should not be exaggerated and a lot depended on the corporate culture in different countries. The overall judgement is positive; the apparent reasons for this success include the following.

- Key employee representatives in Germany were willing to devote time and effort to the project (they had been planning to set up an EWC before the company made its SE proposals) but at the same time they made a deliberate effort not to dominate the process or the bodies set up through it (they held only two out of 23 seats on the SE works council, despite having one-third of the employees).
- Management wanted to have a more European structure, including for the supervisory board, and was willing to develop employee relations initiatives at European level.
- Social dialogue within the headquarters of the company is based on a culture of respect with a willingness to look for compromise.
- Links exist with the trade unions, which were able to deliver excellent preparation for the employee representatives in their negotiations.
- Employee representatives speak fluent English, allowing them to work together more easily and the employee supervisory board members to play a full part in the meetings (in English).
- There is a strong commitment to the project from top management.

The Strabag and Hager cases, too, show that employees have started to take the idea of European interest representation and mandates seriously. In both cases, the employees made compromises in order to find the best possible solution for interest representation at the European level.

Important in this context is the protection against dismissal for employee representatives in SE works councils and supervisory boards. In many agreements the employee representatives have succeeded in defining provisions on this on a European level, despite the fact that the directive does not foresee a European regulation of this important issue and most employers prefer a solution that defines the dismissal issue against the respective national backgrounds.

A final and positive example of innovative ideas and solutions implemented in SE agreements is dispute settlement clauses, as in the Equens agreement.

Conclusions 4

The examples of the European Companies discussed in this report illustrate a broad spectrum of corporate cultures, labour relations and social dialogue contexts. This allows some general conclusions to be reached with regard to the major research interest of this project.

First, it is clear that European Companies (or Societas Europaea, SEs) have been set up for several reasons, which can at times be very company specific but also exhibit common features. Generally, companies use SE registration to streamline and create leaner company structures. This should be seen in the context of accelerated internationalisation and the challenges this is causing for transnational corporate structures and business organisation. A consequence in practice might be a centralisation of management decisions. In this context the SE provides an opportunity for companies to develop structures and channels to implement and organise corporate decisions more easily at grass-roots level and in a cross-border manner. This aspect of facilitating transnational decision-making was referred to by all interview partners on the management side in the companies analysed in our research.

This streamlining and 'centralisation' of decision-making also characterises the organising of social dialogue, information and consultation practice and employee participation at the company level in the SE. Contrary to the major findings of a study carried out in 2008–2009 on the operation of SEs (Ernst & Young 2009), employee involvement in the SE is not perceived by the companies in this study as something 'arbitrary' or as cumbersome padding. Rather, it is seen in all cases as an integral part of corporate governance in the EU and in most cases as an important aspect of successful and efficient transnational decision-making and human resources development, which helps with managing structural change at company level.

A striking result of this study is that in no case did anyone describe employee involvement in general, or the SE-specific process of negotiating employee involvement in particular, as a hindrance in establishing an SE. Though the process was described as somewhat complicated at times, company representatives are quite convinced of the need to organise the process in order to develop a solution that best fits the specific requirements of the company. Interestingly, this was explained in terms both of the legal requirements (for instance, having to conclude an agreement within a six-month period) and of the need to develop certain structures, institutional arrangements and company-wide practices of social dialogue, information and consultation as well as employee participation in the boardroom. From the point of view of the management of a transnational company in Europe, this need is quite evident against the background of the heterogeneity of national (and local) industrial relations in Europe. In this context, this employee involvement in SEs is clearly an added value, since – for the first time – it truly creates a European level of interest representation and common transnational standards. This in a field, which – according to most interview partners – is characterised by an often confusing patchwork of structures and practice.

In this context, it is important to stress that, in nearly all the companies that had previous experience of European works council (EWC) structures, respondents stressed the quite significant differences between the EWC, with its particular form of transnational information and consultation, and the SE agreement on employee involvement. This relates not only to the fact that SE works councils are often better equipped and more competent than EWCs. For company representatives of both sides, the more fundamental difference is that EWCs are rather voluntaristic and 'symbolic' institutions of information, while the agreement on employee involvement in the SE forms an essential element of corporate governance, and as such is taken much more seriously by all actors involved. This seriousness of the exercise is expressed by the process of preparing and negotiating the SE agreement (including an inventory of national industrial relations, SNB etc.).

This perhaps explains why in nearly all the companies visited for this research, substantial progress in negotiation was made in a six-month period, whereas EWC agreements have been much slower in the making. This has been possible only on the basis of clear agendas and the mutual understanding and common interest of employee and management representatives. Additionally, the directive on employee involvement in the SE has provided a firm legal basis on which to negotiate.

This existence of strong common interests – notwithstanding the divergent concerns and objectives that exist in any such negotiating context – has been a notable feature of most of the company cases analysed. A particularly strong common basis of interests results from the need to gain and increase acceptance of company decisions in situations of transnational restructuring and change. For this, well-functioning social dialogue and stable and consensus-based labour relations in all parts of the company are an essential and add a clear added value, as shown by the cases of Equens (in managing the merger of the German and Dutch parts of Equens, and integrating the Italian partners), BASF (integrating CIBA), and MAN (managing the effects of the crisis and continuous restructuring). All these examples illustrate the importance of trust, mutual understanding and cooperation for organising and implementing change in a smooth and constructive way.

Another advantage of dialogue at transnational level is evident in the case of GfK. In this special type of knowledge-based company, which has expanded very rapidly and extensively, the SE works council for the first time creates a platform for involving the highly skilled workforce in the developments and challenges associated with transforming GfK into a global player. For many of the employee representatives from countries with smaller branches, the SE works council is the only way to meet their top managers in a more official and formal environment. This also benefits the local level, where representatives of the SE works council can end up having better contacts and more links with top management than many local executives.

The GfK case also illustrates another added value of employee involvement in the SE – namely, that the development of clear institutional practice at central and transnational level has a positive impact on social dialogue at the local level in countries where such practice is weak or non-existent. In the case of GfK, this has resulted in the establishment of a works council in Poland and new structures of information and consultation at workplace level in Italy as a result of the SE and the employee representation structures associated with it.

There are indications that the arrangements and practical experience of employee involvement in the SE (as documented in some of the cases in this report) are opening up a new dimension of Europeanisation. Apart from the development of transnational structures and practices, there are also signs that the organisation of employee involvement in the SE supports the development of European identities and the notion of 'European mandates'. This becomes clear, for example, when employee representatives at board level or in SE works council select committees see themselves as representing European rather than national interests. It is clear that such an understanding of European and transnational interest representation and organisation is supported and triggered by actors who are actively involved and rooted in EU-level policy and developments. Here the EU social partners and European industry federations are playing a particularly constructive and positive role. Against the background of restricted resources and limited personnel, initiatives like the setting up of the 'European Worker Participation Competence Centre' (EWPC) appear particularly valuable. From our viewpoint, it would be helpful if in the near future this employee initiated, proactive body were to be supplemented by a similar institution representing employers and providing support for them in the context of SE creation. So far, no institutions such as the database on SEs or the EWPC exist on the employer's

side, even though the need for practical support, exchange of information and practical experience is certainly as pronounced here as on the employee side.

To conclude, the case study research clearly shows that employee involvement in a 'normal' SE according to both the EU directive and the specific company requirements should not be seen as a 'bitter pill' that must be swallowed in order to take advantage of the overall SE formula. Rather, it should be seen as an essential aspect of European corporate governance that – if taken seriously – can have positive effects on corporate development.

Here, a comment needs to be made on the nature of the case study sample. Though the sample illustrates a variety of national, sectoral and other different backgrounds and contexts, a common feature of all the companies is a positive perception of social dialogue and employee involvement. In this respect, the companies analysed in this research report should be regarded as 'good practice' cases.

Against this background, our research results are quite good news for European policymakers and the authors of the SE directive. The specific approach deriving from the idea of the added value of social dialogue, which includes integrating the notion of employee involvement as an essential part of the SE legislation, is shown to be a movement in the right direction. The directive on employee involvement in SEs has resulted in agreements and concrete implementation at the company level – regarded by actors on both sides as positive. It brings a new dimension of EU-level modelling to labour relations and has a positive effect on those workplaces where the notion of social dialogue and cooperation has so far been either weak or non-existent.

However, the research also yields not-so-good news. The survey of research and policy debates, the results of the inventory of existing SEs, the comments made by EU-level social partners and issues raised at the two expert meetings that accompanied this work also revealed concerns and situations that were presumably not foreseen by the authors of the directive. In particular, both national and European trade unions and employee representation bodies also report cases where companies use the opportunity to establish a European Company to freeze or even weaken employee involvement – in particular, participation at board level. There are also examples (for instance in France) where the SE directive may negatively affect national-level information, consultation and employee involvement. Although the empirical research carried out for this report does not indicate that this is a structural deficit of the SE directive, these cases and evidence should be studied in greater detail.

A further and important issue for future analysis, evaluation and monitoring is the case of 'shelf' and 'empty' SEs. A notable result of our inventory of existing SEs is that these types of SEs, the creation of which has become a specialist industry, have developed into a significant group of existing European Companies. What is worrying about this type of SE is that the directive does not make any provision for employee involvement in cases where an empty or shelf SE is turned into a normal one. Whether or not this may result in a concrete need to adjust the 'before and after' principle of the directive is an important point for debate amongst European social partners and experts. It should therefore also be addressed by further work and investigation into the practice of European Companies.

Bibliography

Abu Taleb, M., *Die Haftungsverhältnisse bei der Gründung einer Europäischen Aktiengesellschaft (SE) in Deutschland und England*, Baden-Baden, Nomos, 2008.

Akbarian, L., Baatz, E. and Bauer, M., *Handbuch der Europäischen Aktiengesellschaft – Societas Europaea*, Heidelberg, C.F. Müller, 2005.

Altmeyer, W., Diekmann, T. and Zachert, U., 'Europäische Aktiengesellschaft: Verhandlung einer Mitbestimmungsvereinbarung für die tesa SE', *Arbeitsrecht im Betrieb*, Vol. 30, No. 5, 2009, pp. 260–263.

Banzhaf, M.O., *Die Entsprechenserklärung der Societas Europaea (SE) mit Sitz in Deutschland mit Blick auf die US-amerikanischen Anforderungen an gute corporate governance*, Frankfurt, Peter Lang, 2009.

Bauer, M., *Organstellung und Organvergütung in der monistisch verfassten Europäischen Aktiengesellschaft (SE)*, Frankfurt, Peter Lang, 2008.

Baums, T., and Ulmer, P., *Unternehmens-Mitbestimmung der Arbeitnehmer im Recht der EU-Mitgliedstaaten*, Heidelberg, Recht und Wirtschaft, 2004.

Bayer, J., and Schmidt, W., '"Going European" – die SE europaweit auf dem Vormarsch', *Die Aktiengesellschaft*, Vol. 9, pp. R192–R200, Cologne, 2007.

Bayer, J. and Schmidt, W., '"Going European" continues – die Zahl der SE steigt weiter', *Die Aktiengesellschaft*, Vol. 3, 2008, pp. R31–32,.

Bedrač, J., 'What makes a good company? Employee interest representation in European company law: reflections and legal provisions', ETUI-REHS, Report 94, Brussels, 2006.

Beyer, W., 'Gründung', in Lutter, Marcus and Hommelhoff, Peter (eds), *SE-Kommentar: SE-VO, SEAG, SEBG, Steuerrecht*, Cologne, Otto Schmidt, 2008, pp. 196–372.

Biehler, Hermann, 'Zur Mitbestimmungspraxis in den deutschen Allianz-Unternehmen nach der Gründung der Allianz SE', *Abschlussbericht*, Munich, May 2009.

Biehler, H., and Hahn, E., *The process of creation of Allianz SE from the point of view of the employees*, UNI-Europa Finance, 2007.

Blanke, T., *Vorrats-SE ohne Arbeitnehmerbeteiligung*, Düsseldorf, Hans-Böckler-Stiftung, 2005.

Blanke, T., *Erweiterung der Beteiligungsrechte des SE-Betriebsrats durch Vereinbarungen Reihe*, series from the Hans-Böckler-Stiftung, No. 170, Düsseldorf, 2006.

Boettcher, F., *Die Kompetenzen von Verwaltungsrat und geschäftsführenden Direktoren in der monistischen SE in Deutschland*, Baden-Baden, Nomos, 2009.

Bouloukos, M., 'The European Company (SE) as a vehicle for corporate mobility within the EU: a breakthrough in European corporate law?', *European business law review*, Vol. 18, No. 3, 2007, pp. 535–557.

BUSINESSEUROPE, Position Paper – *Questionnaire on the review of Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of the employees*, Brussels, 25 January 2008.

BUSINESSEUROPE, *Consultation on the results of the study on the operation and the impacts of the statute for a European Company (SE)*, 23 May 2010.

Büsching, H., 'Steuerrecht', in Jannot, D. and Frodermann, J., *Handbuch der Europäischen Aktiengesellschaft – Societas Europaea -: Eine umfassende und detaillierte Darstellung für die Praxis unter Berücksichtigung sämtlicher EU-Mitgliedstaaten*, Heidelberg, C.F. Müller, 2005, pp. 457–530.

Carley, M. and Bockler, H., 'European Company Statute nearing adoption?', *European industrial relations review*, Vol. 293, 1998, pp. 24–27.

Carley, M., 'Board-level employee representatives in nine countries: a snapshot', *Transfer: European review of labour and research*, Vol. 11, No. 2, 2005, pp. 231–243.

Casper, M. and Schäfer, C., 'Die Vorrats-SE: Zulässigkeit und wirtschaftliche Neugründung', *ZIP*, Vol. 28, No. 14, 2007, pp. 653–662.

Cattero, B. et al., 'Worker participation and the Lisbon Agenda', in *Benchmarking Working Europe*, Brussels, ETUI, 2009, pp. 53–66.

Dal-Ré, F.V., *Studies on the implementation of labour law directives in the enlarged European Union. Directive 2001/86/EC supplementing the European Company with regard to the involvement of employees*, Synthesis report, Madrid, Labour Associados, 2007.

Davies, P.L., 'Workers on the board of the European company', *Industrial Law Journal*, Vol. 2, 2003, pp. 75–96.

Deakin, S., 'Reflexive governance and European company law', *European Law Journal*, Vol. 15, No. 2, 2009, pp. 224–245.

Deneke, C., *Die Implementierung eines Prüfungsausschusses in die deutsche Aktiengesellschaft und Europäische Gesellschaft (SE) unter besonderer Berücksichtigung europäischer und US-amerikanischer Rechtsentwicklungen*, Frankfurt, Peter Lang, 2009.

Eidenmüller, H., Engert, A. and Hornuf, L., 'Die Societas Europaea: Empirische Bestandsaufnahme und Entwicklungslinien einer neuen Rechtsform', *Die Aktiengesellschaft*, Vol. 20, 2008, pp. 721–730.

Eidenmüller, H., Engert, A. and Hornuf, L., 'Incorporating under European Law: The *Societas Europaea* as a vehicle for legal arbitrage', *European Business Organisation Law Review (EBOR)*, Vol. 10, 2009a.

Eidenmüller, H., Engert, A. and Hornuf, L., 'The Societas Europaea: Good news for European firms', *ECGI – Law* Working Paper No. 127, 2009b.

Ernst & Young, *Study on the operation and the impact of the Statute for a European Company (SE)*, Report drawn up following call for tender from the European Commission, 2009.

ETUI, *ETUI's reply to the consultation of the EU Commission on the SE study of Ernst & Young*, Brussels, European Trade Union Institute, 2010.

Eurofound, *European Works Councils in practice: Key research findings*, Dublin, Eurofound, 2008.

European Commission, *Communication from the Commission on the Review of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees*, COM (2008) 591 final, Brussels, 2008).

EWCB, 'European Company Statute update', *European Works Council Bulletin,* Vol. 59 (9–10), 2005, pp.10–14.

EWCB, 'European Company Statute update', *European Works Council Bulletin*, Vol. 65 (9–10), 2006, pp. 12–14.

Freudenberg, T., 'Arbeitnehmerbeteiligung ohne Arbeitnehmer? Mitbestimmung bei der Vorrats-SE beschäftigt Registergerichte', in *GmbHRundschau – Gesellschafts- und Steuerrecht der GmbH und GmbH & Co.*, Vol. 7, 2006, Cologne, 2006, pp. R125–R128.

Frodermann, J., 'Das Wahlrecht zur Organisationsverfassung', in Jannot, D. and Frodermann, A., *Handbuch der Europäischen Aktiengesellschaft – Societas Europaea -: Eine umfassende und detaillierte Darstellung für die Praxis unter Berücksichtigung sämtlicher EU-Mitgliedstaaten*, Heidelberg, C.F. Müller, 2005, pp. 136–203.

Fulton, L., *Worker representation in Europe*, Labour Research Department, UK and ETUI-REHS, 2007.

Fulton, L., *Anchoring the European Company in national law – Country overviews*, 2008.

Glass, E., *Mitbestimmung in Societas Europaea – Ein Blick auf die Umsetzung des Rechtsstatuts und dessen Wirkung, unter Berücksichtigung der Vereinbarungen zur Mitarbeiterbeteiligung*, Master's thesis (unpublished), Hamburg University, 2009.

Gold, M., Nikolopoulos, A., and Kluge, N. (eds), *The European Company Statute – A new approach to corporate governance*, Frankfurt, Peter Lang, 2009.

Gold, M., and Schwimbersky, S., 'The European Company Statute: implications for industrial relations in the European Union', *European Journal of Industrial Relations*, Vol. 14, No. 1, 2008, pp. 46–64.

Gößl, U., *Die Satzung der Europäischen Aktiengesellschaft (SE) mit Sitz in Deutschland*, Tübingen, Mohr Siebeck, 2009.

Graf Kanitz, Schüppen & Partner (eds), *Europäische Aktiengesellschaft (Societas Europaea – SE) und grenzüberschreitende Umwandlung: Textsammlung zum Gesellschafts- und Mitbestimmungsrecht*, Munich, Beck, 2008.

Group of Experts, ILO International Training Centre, *European systems of worker involvement (with regard to the European company statute and the other pending proposals)*, Final report, 1997.

Habersack, M., 'Schranken der Mitbestimmungsautonomie in der SE – Dargestellt am Beispiel der Größe und inneren Ordnung des Aufsichtsorgans', *Die Aktiengesellschaft*, Vol. 10, 2006, Cologne, pp. 345–355.

Handlanger, C., *Die Europäische Aktiengesellschaft als Rechtsform für den Mittelstand*, Bremen, Salzwasser, 2008.

Hans-Böckler Foundation, *Europäische Aktiengesellschaften: Keine Aushöhlung der Mitbestimmung*, press release, 23 April 2010.

Heinze, W., *Mitbestimmung in einer monistischen europäischen Aktiengesellschaft. Eine rechtsvergleichende Betrachtung zwischen einer mitbestimmten monistisch strukturierten Societas Europaea in Deutschland und einer mitbestimmten monistisch strukturierten société anonyme in Luxemburg*. Berlin, Münster, 2009.

Heinze, W., Seifert, A. and Teichmann, C., 'BB-Forum: Verhandlungssache – Arbeitnehmerbeteiligung in der SE', *Betriebs Berater*, Vol. 46, 2005, pp. 2524–2530.

Hoffmann, R., 'Die Mitbestimmung in der SE, in *Die Societas Europaea (SE) – Dokumentation der Seminare vom 30. März 2006 und vom 24 April 2007*, Frankfurt, Deutsches Aktieninstitut, 2007.

Hoffmann, J., Hoffmann, R., Kirton-Darling, J., Rampeltshammer, L., Eurofound (European Foundation for the Improvement of Living and Working Conditions, *The Europeanisation of industrial relations in a global perspective: A literature review*, Luxembourg, Publications Office of the European Union, 2002.

Hojnik, J., 'Indirect management and implications for industrial relations of the European Company Statute: the case of Slovenia', in Gold, N. and Kluge, N. (eds), *The European Company Statute – A new approach to corporate governance*, Frankfurt, Peter Lang, 2009, pp. 191–198.

Hoops, A., *Die Mitbestimmungsvereinbarung in der Europäischen Aktiengesellschaft (SE)*, Kenzingen, Centaurusm 2009.

Ionnou, C.A., 'Implication of the European Company for Human Resource management and Industrial Relations: New challenges for Corporate Governance', in Gold, N. and Kluge, N., *The European Company Statute – A new approach to corporate governance*, Frankfurt, Peter Lang, 2009, pp. 191–198.

Jacobs, M., 'Privatautonome Unternehmensmitbestimmung in der SE' in *Festschrift für Karsten Schmidt zum 70. Geburtstag*, Cologne, Otto Schmidt, 2009, pp. 795–816.

Jannot, D. and Frodermann, A., *Handbuch der Europäischen Aktiengesellschaft – Societas Europaea: Eine umfassende und detaillierte Darstellung für die Praxis unter Berücksichtigung sämtlicher EU-Mitgliedstaaten*, Heidelberg, C.F. Müller, 2005.

Jannott, D., 'Gründung', in: Jannot, D. and Frodermann, A. *Handbuch der Europäischen Aktiengesellschaft – Societas Europaea -: Eine umfassende und detaillierte Darstellung für die Praxis unter Berücksichtigung sämtlicher EU-Mitgliedstaaten*, Heidelberg, C.F. Müller, 2005, pp. 35–117.

Johnston, A., Syrpis, P., 'Regulatory competition in European company law after Cartesio',*European Law Review*, Vol. 34, No. 3, 2009, pp. 378–404.

Kaar, R. van het, 'Company law and workers' interests', *Transfer: European Review of Labour and Research*, Vol. 11, No. 2, 2005, pp. 179–188.

Kaar, R. van het, 'Mitbestimmung in Europa: Die Bedeutung des Gesellschaftsrechts für die Vertretung von Arbeitnehmerinteressen', *WSI-Mitteilungen*, Vol. 59, No. 11, 2006.

Kelemen, M., *Employee involvement in European Companies in Hungary and Slovakia with reference to Germany. Theoretical issues and case study examples,* Masters' thesis (unpublished), Warwick Business School, University of Warwick, 2009.

Keller, B., 'The European Company statute: employee involvement – and beyond', *Industrial Relations Journal*, Vol. 33, No. 5, 2002, pp. 424–445.

Keller, B. and Werner, F., 'Arbeitnehmerbeteiligung in der Europäischen Aktiengesellschaft (SE) – Eine empirische Analyse der ersten Fälle', *WSI-Mitteilungen*, Vol. 60, No. 11, 2007, pp. 604–612.

Keller, B. and Werner, F., 'The establishment of the European Company: The first cases from an industrial relations perspective', *European Journal of Industrial Relations*, Vol. 14, No. 2, 2008a, pp. 153–175.

Keller, B. and Werner, F., 'Negotiated forms of worker involvement in the European Company (SE) – first empirical evidence and conclusions', *Management Revue*, Vol. 19, No. 4, 2008b, pp. 291–306.

Keller, B. and Werner, F., 'Arbeitnehmerbeteiligung in der Europäischen Aktiengesellschaft (SE): empirische Befunde und (un-)erwartete Konsequenzen', *WSI-Mitteilungen*, Vol. 62, No. 8, 2009, pp. 416–424.

Kienast, R. 'Mitbestimmung in der Europäischen Aktiengesellschaft', in: Jannot, D. and Frodermann, A. *Handbuch der Europäischen Aktiengesellschaft – Societas Europaea: Eine umfassende und detaillierte Darstellung für die Praxis unter Berücksichtigung sämtlicher EU-Mitgliedstaaten*, Heidelberg, C.F. Müller, 2005, pp. 377–456.

Klambauer, M., *Case study report on Strabag SE,* Brussels: ETUI-SEEurope, 2008.

Kluge, N., 'Corporate governance with co-determination – a key element of the European Social Model', *Transfer: European Review of Labour and Research*, Vol. 11, No. 2, 2005, pp.163–177.

Kluge, N. and Stollt, M. (eds), *The European Company – prospects for worker board-level participation in the enlarged EU*, Brussels, SDA/ETUI, 2006.

Kluge, N. and Stollt, M., 'Übersicht: Unternehmensmitbestimmung in den 27 EU-Mitgliedstaaten', in Köstler, R. (ed.), *Die Europäische Aktiengesellschaft: Eine Einführung in die Europäische Aktiengesellschaft mit Anmerkungen zur grenzüberschreitenden Verschmelzung*, 3rd edn, Düsseldorf, Hans Böckler Stiftung, 2007a, pp. 47–50.

Kluge, N. and Stollt, M., 'The European company (SE) – First experiences of the application of this new piece of European corporate law – review from the employees' perspective', in *The Societas Europaea or SE – The new European company*, Paris, HEC Europe Institute, 2007b, pp. 197–207.

Kluge, N. and Vitols, S., 'Worker participation in boardrooms: A fact across many EU Member States', in Gold, N., Nikolopoulos, A. and Kluge, N., *The European Company Statute – A new approach to corporate governance*, Frankfurt, Peter Lang, 2009.

Kluge, N. and Vitols, S., 'The European company. A pilot for integrating shareholder value into stakeholder-orientated European Societies?', in Gold, N., Nikolopoulos, A. and Kluge, N., *The European company statute – A new approach to corporate governance*, Frankfurt, Peter Lang, 2009, pp. 67–83.

Knudsen, H., Muller, T. and Rehfeldt, U., *Converting MAN B&W Diesel AG into MAN Diesel SE – negotiations and the agreement on employee involvement*, SEEurope, 2008.

Komo, D., and Villiers, C., 'Are trends in European company law threatening industrial democracy?', *European Law Review*, Vol. 34, No. 2, 2009, pp. 175–204.

Koukiadaki, A., 'Reflexive regulation of employee involvement at EU-level : Implementation and the example of the United Kingdom, *The European Company Statute – A new approach to corporate governance*, Frankfurt, Peter Lang, 2009, pp. 109–141.

Koutroukis, T., 'Employee participation in the European Company' in Gold, M., Nikolopoulos, A. and Kluge, N., *The European Company Statute – A new approach to corporate governance*, Frankfurt, Peter Lang, 2009, pp. 191–198.

Köstler, R., 'What is a European Company?', in Kluge, N. and Stollt, M. (eds), *The European company – Prospects for worker board-level participation in the enlarged EU*, Brussels, SDA/ETUI, 2006, pp. 15–29.

Köstler, R. (ed.), *Die Europäische Aktiengesellschaft: Eine Einführung in die Europäische Aktiengesellschaft mit Anmerkungen zur grenzüberschreitenden Verschmelzung*, 3rd edn, Düsseldorf, Hans Böckler Stiftung, 2007a, pp. 47–50.

Köstler, R., 'Die Europäische Aktiengesellschaft. Eine Einführung in die Europäische Aktiengesellschaft mit Anmerkungen zur grenzüberschreitenden Verschmelzung', Series: 'Arbeitshilfen für Aufsichtsräte' der Hans-Böckler-Stiftung, No. 6, 4th revised edition, Düsseldorf, 2008.

Köstler, R. and Büggel, A., *The European Company and company law and existing legislative provision for employee participation in the EU Member States*, Brussels, ETUI, 2003.

Köstler, R. and Werner, F., 'SE zwischen Eiszeit und Europa', *Mitbestimmung*, Vol, 60, 2007, pp. 48–51.

Köstler, R. and Werner, F., 'Die SE unter der Lupe', in *Die Aktiengesellschaft, Zeitschrift für das gesamte Aktienwesen, für deutsches, europäisches und internationales Unternehmens- und Kapitalmarktrecht*, AG-Report 53, 2008, R 105.

Lange, K., *Die Mitbestimmung bei der Europäischen Aktiengesellschaft. Band 2 der Reihe: Die Europäische Aktiengesellschaft*, Bremen and Hamburg, Salzwasser, 2006.

Lecher, W. Platzer, H., Rub, S., Weiner, K., *European Works Councils: negotiated Europeanisation – Between statutory framework and social dynamics*, London, Ashgate, 2002.

Leca, C., 'The participation of employees' representatives in the governance structure of the Societas Europaea', *European Business Law Review*, Vol. 18, No 3, 2007, pp. 403–441.

Lenoir, N., *The Societas Europaea or SE – The new European Company*, HEC European Institute, Paris, 2007.

Lenoir, N., 'The Societas Europaea (SE) in Europe – A promising start and an option with good prospects', *Utrecht Law Review*, Vol. 4, No.1, 2008, pp. 13–21.

Mann, F.A., 'The European Company', *International and Comparative Law Quarterly*, Vol. 19, No. 3, 1970, pp. 468–482.

McCahery, J.A. and Vermeulen, E.P.M., 'Does the European Company prevent the Delaware Effect?', *European Law Journal*, Vol. 11, No. 6, 2005, pp. 785–801.

Melero, M. and Adroher i Pérez, E., 'Spanien', in Jannot, D. and Frodermann, A., *Handbuch der Europäischen Aktiengesellschaft – Societas Europaea: Eine umfassende und detaillierte Darstellung für die Praxis unter Berücksichtigung sämtlicher EU-Mitgliedstaaten*, Heidelberg, C.F. Müller, 2005, pp. 931–953.

Merdzo, P., *Die Umwandlung in eine Europäische Aktiengesellschaft: Gesellschafts- und Arbeitsrecht*, Saarbrücken, 2008.

Messow, B., *Die Anwendbarkeit des deutschen Corporate-governance-Kodex auf die Societas Europaea (SE)*, Frankfurt, Peter Lang, 2008.

Müller-Bonanni, T. and Melot de Beauregard, P., 'Mitbestimmung in Societas Europaea', *GmbHRundschau – Gesellschafts- und Steuerrecht der GmbH und GmbH & Co.*, Vol. 4, 2005, Cologne, pp. 195–200.

Nagel, Bernhard, 'Der Konflikt zwischen der deutschen und der angelsächsischen Corporate Governance und die Europäische Gesellschaft (SE)', in Brandes, W., Eger, T. and Kraft, M. (eds),*Wirtschaftwissenschaften zwischen Markt, Norm und Moral*, Kassel, Kassel University Press, 2006, pp. 337–359.

Nagel, Bernhard, 'Umwandlung und Betriebsübergang – Die Mitbestimmung bei der Formwechselnden Umwandlung einer deutschen AG in eine Europäische Gesellschaft (SE)', *Arbeit und Recht*, Vol. 55, No. 10, 2007, pp. 329–336.

Nagel, B., Freis, G. and Kleinsorge, G., *Beteiligung der Arbeitnehmer im Unternehmen auf der Grundlage des europäischen Rechts*, Berlin, De Gruyter Recht, 2009.

O'Kelly, K.P., 'A European project for employee board-level representatives: issues, roles and responsibilities', *Transfer: European Review of Labour and Research*, Vol. 11, No. 2, 2005, pp 221–230.

Oplustil, K. and Teichmann, C., *The European company – all over Europe – A state-by-state account of the introduction of the European company*, Berlin, De Gruyter Recht, 2004.

Patra, E., 'Problems that arise for managers and employees' representatives from the regulation of industrial relations in the European Company (Societas Europeae – SE)', Paper presented at the Conference on Societas Europeae, Center of Industrial Relations and Negotiations (CIRN), Athens University of Economics and Business (AUEB), Athens, 12–14 July 2006.

Pulignano, V., 'EWCs and cross-national employee representative coordination – A case of trade union cooperation?', *Economic and Industrial Democracy*, Vol. 26, No. 3, 2005, pp. 383–412.

Rehfeldt, U., 'Lente avancée de la Société européenne', *Chronique Internationale de l'IRES*, No. 101, July 2006.

Rehfeldt, U., 'Nöelle Lenoir: La SE ou Societas europea: pour une citoyenneté européenne de l'entreprise', (book review), *Transfer: European Review of Labour and Research*, Vol. 13, No. 2, Summer 2007.

Rehfeldt, U., 'Mise en cause du modèle de codetermination chez Volkswagen', *Chronique Internationale de l'IRES*, No. 114, September 2008.

Robakov, Jevgeni, 'Societas Europaea – Analysis of adoption and practical functioning', Master's thesis (unpublished), Jönköping International Business School, Jönköping University, 2007.

Rose, C., 'The new corporate vehicle Societas Europaea (SE): Consequences for European corporate governance', *Corporate Governance: An International Review*, No. 2, March 2007, pp. 112–121.

Rose, E., *Das Verfahren zur Revision der europäischen EBR-Richtlinie*, Dusseldorf, Hans-Böckler-Stiftung, 2008.

Rothig, O., 'Cornerstone of a new reference model?', *Mitbestimmung*, international edition, Hans-Böckler-Stiftung, 2006.

Schreiner, M., *Zulässigkeit und wirtschaftliche Neugründung einer Vorrats-SE*, Hamburg, Kovač, 2009.

Schwimbersky, S. and Rehfeldt, U., *Case study report on Plansee SE'*, Brussels, ETUI-SEEurope, 2006.

Sjåfjell, B., *Towards a sustainable European company law: a normative analysis of the objectives of EU law, with the takeover directive as a test case*, Alphen aan den Rijn, Wolters Kluwer, 2009.

Sorge, A., 'Mitbestimmung für die Europäische Aktiengesellschaft: nützliche Lehren aus mehr als dreißig Jahren Seifenoper', in Beckert, J., Ebbinghaus, B., Hassel, A. and Manow, P. (eds), *Transformationen des Kapitalismus – Festschrift für Wolfgang Streeck*, Frankfurt, Campus, 2006.

Steinberg, M., *Mitbestimmung in der Europäischen Aktiengesellschaft. Die Richtlinie 2001/86/EG zur Beteiligung der Arbeitnehmer in der SE*, Hamburg, Kovač, 2006.

Stenstrand, T., Bruun, N. and Neumann, L., *Elcoteq SNB Negotiations – Experiences and procedures*, Brussels, ETUI-SEEurope, 2007.

Stollt, M., 'Frequently asked questions on the European Company', in Kluge N. and Stollt, M. (eds), *The European Company – prospects for worker board-level participation in the enlarged EU*, Brussels, SDA/ETUI, 2006, pp. 62–63.

Stollt, M., 'The European Company (SE) – New perspectives for companies and for worker involvement', presentation at the SEEurope Conference, 4–5 November 2008, Brussels.

Taylor, R., 'Industrial democracy and the European traditions', *Transfer: European Review of Labour and Research*, Vol. 11, No. 2, 2005, pp. 155–162.

Taylor, R. 'Taking Responsibility in an SE – A new challenge for workers from different cultural and political backgrounds', in Kluge, N. and Stollt, M. (eds), *The European Company – prospects for worker board-level participation in the enlarged EU*, Brussels, SDA/ETUI, 2006.

Theisen, M. and Wenz, M., *Die Europäische Aktiengesellschaft. Recht, Steuern, Betriebswirtschaft der Societas Europaea (SE)*, 2nd edn, Stuttgart, Schäffer-Poeschel, 2005.

Triangle, L., 'Workers' involvement in the European Company – the SE Guidelines of the European Metalworkers Federation', in *Transfer: European Review of Labour and Research,* Vol. 11, No. 2, 2005, pp. 207–219.

Van Gerven, D. and Storm, P. (eds), *The European Company*, Cambridge, Cambridge University Press, 2008.

Veersma, U. and Swinkels, S., 'Participation in European Companies: views from social partners in three Member States', *Transfer: European Review of Labour and Research*, Vol. 11, No. 2, 2005, pp. 189–205.

Waddington, J. and Kluge, N., 'Corporate governance and the voice of labour: Issues and debates', in: Bercusson, B., et al. (eds), *Paths to Progress. Mapping innovation on information, consultation and participation for employee involvement in corporate governance*, Brussels, SDA, 2006.

Villiers, C., 'The Directive on employee involvement in the European Company: Its role in European corporate governance and industrial relations', *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 22, No. 2, 2006, pp. 183–211.

Weiss, M., 'Workers' involvement in the European Company', in: Biagi, M. (ed.), *Quality of work and employee involvement in Europe*, The Hague, Kluwer Law International, 2002, pp. 63–79.

Werder, A. von, 'Modern Modernisierung der Mitbestimmung' in *Die Betriebswirtschaft*, Heft 2/2004, pp. 229 – 258.

Werner, F., 'The European Company and employee involvement: Some initial observations from an industrial relations perspective', in Gold, M., Nikolopoulos, A. and Kluge, N., *The European Company Statute – A new approach to corporate governance*, Frankfurt/M: Lang, 2009.

ZAAR (Zentrum für Arbeitsbeziehungen und Arbeitsrecht), *Vereinbarte Mitbestimmung in der SE: 5. ZAAR-Kongress*, Munich, ZAAR (ZAAR-Schriftenreihe, Bd. 12), 2008.

Annex:
Inventory of SEs (at 1 June 2010)

Table A1: 'Normal' SEs

	Sector	Headquarters	Concerned countries (number of employees)
DIAG Human SE	Other	Liechtenstein	Czech Republic, Liechtenstein
Donata Holding SE (former Atrium Fünfte Europäische VV SE)	Chemicals	Germany	Spain (936), France (786), UK (745), Germany (564), Poland (232) plus 10 other EU countries
DVB Bank SE	Services Finance	Germany	Germany (209), UK, Greece, Norway, Netherlands
E.ON Energy Trading SE	Other	Germany	Germany, UK, Netherlands ,Spain, Belgium, Poland
Elanor Europe SE (former Hestia SE)	Other Services	Czech Republic	Czech Republic, Hungary, Slovakia, Poland, Romania
Elcoteq SE	Metal	Luxembourg	Estonia (3,342), Finland (861), Germany (548) Hungary(2, 692), Spain (7), Luxembourg
ElectronicPartner Handel SE	Services Commerce	Germany	Germany, Austria, Belgium, Italy, Netherlands, Poland, Switzerland
Elster Group SE	Metal	Germany	Austria (16), Belgium (200), Denmark (23), France (187), Germany (1774), Hungary (46), Italy (55), Luxembourg (9),Netherlands (146), Norway (5), Poland (142), Romania (163), Slovakia (622), Estonia (152), UK (356)
ENRO Energie SE (former Yella SE)	Other	Germany	Germany
EP Line SE	Services Commerce	Czech Republic	Czech Republic
EPEX Spot SE	Services Finance	France	Belgium, Estonia, Luxembourg, Switzerland
Equens SE	Services Finance	Netherlands	Netherlands, Germany
ETARGET SE	Services IBITS	Slovakia	Hungary, Slovakia (30), Czech Republic, Romania,
Eurofins Scientific SE	Chemicals	France	Belgium, France, Luxembourg (corporate offices)
Euroforum (Informa) Deutschland SE	Other Services	Germany	Germany
Eurotunnel SE	Transport	Belgium	UK, France, Belgium, Luxembourg, Netherlands Germany , Spain
Finep Holding SE	Other	Czech Republic	Czech Republic
Fresenius SE	Chemicals, Other Services	Germany	23 EU member states
G.I.S. Europe SE	Services Commerce	Netherlands	Belgium, France, Germany, Italy, Netherlands, Spain, UK
Galleria di Brennero Brennerbasistunnel BBT SE	Building & Woodwork	Austria	Austria, Italy
GEBAUER GEMI SE	Services Commerce	Czech Republic	Czech Republic
General Property Trust SE (former Patriciana SE)	Other Services	Czech Republic	Czech Republic
GFK SE	Other Services	Germany	Germany + 24 EU/EEA Member States
Graphisoft Park SE	Other Services	Hungary	Hungary
Gütermann SE	Textile	Germany	Germany (749), France (13), Netherlands (2), Belgium (2), Italy (133), UK (15) Spain (2)

Form of establishment	Form of corporate governance	European works council	Set up of SNB	Agr. Reach	Information and consultation	Participation	Employees concerned	Date of registration
Merger	One-tier	No	n/a				6-9 (2010)	29 August 2006
Activated Shelf	One-tier	Yes	Yes	Yes	Yes	No	3922 (2006)	21 March 2006
Merger	Two-tier	No	Yes	Yes	Yes	Yes	437 (2008)	1 October 2010
Conversion	Two-tier	Yes	Yes	Yes	Yes	Yes	937 (2009)	29 May 2009
	Two-tier	No	n/a					22 October 2007
Conversion	One-tier	No	Yes	Yes	Yes	No	7450 (2004)	1 October 2005
Conversion	One-tier	No	n/a				> 600 (2009)	3 August 2009
Conversion	One-tier	No	Yes	Yes	Yes	No	3896 (2009)	9 October 2009
Activated Shelf	One-tier	No	n/a				100 (ca) (2009)	13 February 2008
Activated Shelf	Two-tier	No	n/a				6-9 (2009)	15 February 2008
Merger	One-tier	No	n/a				10-49 (2009)	17 September 2008
Merger	Two-tier	No	Yes	Yes	Yes	No	1153 (2007)	17 July 2008
Conversion	Two-tier	No	n/a				30 (2008)	10 August 2008
Conversion	Two-tier	No	n/a				7000 (>) (2007)	25 June 2007
Activated Shelf	One-tier	No	n/a				460 (2009)	7 February 2008
Subsidiary	One-tier	No	n/a				1523 (2008)	4 April 2006
	Two-tier	No	n/a				10-19 (2009)	16 July 2007
Conversion	Two-tier	Yes	Yes	Yes	Yes	Yes	48828 (2007)	13 July 2007
Merger	One-tier	No	n/a				54 (2006)	23 June 2006
Merger	Two-tier	No	Yes	Yes	Yes	No	33 (2004)	17 December 2004
Activated Shelf	Two-tier	No	n/a				10-19 (2009)	31 July 2008
Activated Shelf	Two-tier	No	n/a				10-19 (2009)	10 April 2008
Conversion	Two-tier	No	Yes	Yes	Yes	Yes	3300 (ca) (2009)	2 February 2009
Holding	One-tier	No	No		(No)	(No)	14 (2009)	21 August 2006
Conversion	Two-tier	No	Yes	Yes	Yes	No	800 (ca) (2008)	13 August 2008

	Sector	Headquarters	Concerned countries (number of employees)
H property group SE	Other Services	Czech Republic	Czech Republic
Hager SE	Metal	Germany	France, Germany (2,000), Italy, Poland, Spain, UK, Austria, Belgium, Czech Republic , Estonia, Greece, Hungary, Ireland, Lithuania, Latvia, Netherlands, Poland, Romania, Slovakia
HAWE Hydraulik SE	Metal	Germany	Germany (1,500) (+ other EU Member States)
HC SE	Services Finance	Netherlands	Czech Republic, Slovakia, Netherlands
HEIM Trade SE	Services Commerce	Czech Republic	Czech Republic, Slovakia
Hochland SE	Food, Hotel, Catering & Agriculture	Germany	Germany, Spain, France, Poland, Romania
Huber Group Holding SE	Metal	Germany	Germany and other EU Member States
Huber SE	Metal	Germany	Germany and 12 EU Member States
I.M. Skaugen SE	Transport	Norway	Norway, Denmark
IKANO Bank SE	Services Finance	Sweden	Sweden, Denmark, Norway
International Project and Investment Development Corporation SE	Services Finance	Czech Republic	Czech Republic
Interseroh SE	Metal, Services Commerce	Germany	Germany (1,409), France (157), Poland (124), Belgium (4), Italy (3), Netherlands (6), Austria (18) Slovenia (6), Hungary (2)
Istrokapital SE	Services Finance	Cyprus	Slovakia, Cyprus
James Hardie Industries SE	Services Finance	Netherlands	France, Netherlands, UK
Joh. A. Benckiser SE (JAB)	Services Finance	Austria	Austria, Germany, Netherlands
KKCG SE	Services Finance	Cyprus	Germany, Cyprus, Netherlands, UK
Klöckner & Co. SE	Metal	Germany	France (2,397), Germany (1,788), UK (1,223), Spain (840), Hungary (27), Netherlands (553) Belgium (84), Ireland (6), Bulgaria (247), Lithuania (2), Austria (99), Poland (68), Romania (12) Czech Republic (28)
Knauf Interfer SE	Metal, Services Commerce	Germany	Germany (1,205), Netherlands (8), Austria (2), Czech Republic (1), Poland (3), Hungary (1)
Kuju Group SE	Other Services	Netherlands	Netherlands, UK
Lenze SE	Metal	Germany	Belgium (8), Denmark (41), Italy (96), France (63), Germany (276), Netherlands (59), Poland (160), Estonia (40), Spain (30), Lithuania (9), UK (109)
Limagrain Central Europ - SE	Food, Hotel, Catering & Agriculture	France	France, other European countries
Luxury & Sports Cars SE	Services Commerce	Latvia	Latvia, Estonia, Denmark

Form of establishment	Form of corporate governance	European works council	Set up of SNB	Agr. Reach	Information and consultation	Participation	Employees concerned	Date of registration
Activated Shelf	Two-tier	No	n/a				6-9 (2009)	3 November 2008
Conversion	Two-tier	Yes	Yes	Yes	Yes	No	7600 (2007)	5 June 2007
Conversion	Two-tier	No	Yes	Yes	Yes	No	1800 (2007)	5 August 2008
Merger	Two-tier	No	n/a				250 (<) (2009)	17 December 2007
Merger	Two-tier	No	n/a				10-19 (2009)	27 March 2009
Conversion	Two-tier	No	Yes	Yes	Yes	No	3415 (2010)	18 January 2010
Holding	Two-tier	Yes	Yes	Yes	Yes	No	100 (ca) (2008)	8 April 2008
Conversion	Two-tier	No	Yes	Yes	Yes	No	712 (2008)	13 July 2009
Merger	One-tier	No	employee involvement was not considered		(No)	(No)	a few	20 December 2007
Merger	One-tier	No	n/a				470 (2008)	2 January 2009
Subsidiary	Two-tier	No	n/a				6 (2010)	30 March 2008
Conversion	Two-tier	No	Yes	Yes	Yes	No	1729 (2008)	24 September 2008
Merger	One-tier	No	n/a				750 (ca) (2008)	1 February 2007
Conversion	Two-tier	No	n/a				2300 (>) (2010)	19 February 2010
Conversion	One-tier	No	yes	neg. term.				10 April 2007
Merger	One-tier	No	(Yes)	(Yes)	(Yes)	(No)	6500 (>) (2009)	3 May 2007
Conversion	Two-tier	No	Yes	Yes	Yes	No	7377 (2008)	8 August 2008
Merger	Two-tier	No	Yes	Yes	Yes	Yes	1667 (2008)	27 June 2008
Conversion	Two-tier	No	n/a				215 (>) (2009)	15 July 2008
Conversion	Two-tier	No	Yes	Yes	Yes	Yes	842 (2009)	14 October 2009
Conversion	One-tier	No	n/a				50-249 (2009)	30 June 2007
Subsidiary	Two-tier	No	n/a				19 (2007)	6 June 2007

	Sector	Headquarters	Concerned countries (number of employees)
Lyreco CE, SE	Services Commerce	Slovakia	Slovakia (30), Czech Republic (5), Hungary (5), Austria (9)
MAN Diesel & Turbo SE (former MAN Diesel SE)	Metal	Germany	Czech Republic, Denmark, France, Germany, Greece, Netherlands, Norway, Estonia, Spain, UK
MAN SE	Metal	Germany	Germany, Poland, Austria, Belgium, Czech Republic, Denmark, France, Greece, Hungary, Italy, Netherlands, Norway, Portugal, Slovenia, Slovakia, Estonia, UK
Maple Financial Europe SE	Services Finance	Germany	Germany (86), Italy (16)
Max Boegl International SE	Building & Woodwork	Germany	Germany, Czech Republic, Slovakia, Poland, Romania, Austria, Netherlands
Mensch und Maschine Software SE	Services IBITS	Germany	Austria, Belgium, France, Italy, Germany (212), Poland, Spain, UK
Metz & Co. Europe SE	Food, Hotel, Catering & Agriculture	Netherlands	Netherlands and other European countries
Milium SE	Services Commerce	Belgium	Belgium, Luxembourg
MiracIIS SE (former Elminster SE)	Services IBITS	Czech Republic	Czech Republic, Slovakia
Mons Securities SE (former names: ABN AMRO Nordic Securities SE, Alfred Berg SE)	Services Finance	Sweden	Denmark (59), Finland (66), Norway (53), Sweden (144)
Navigator Equity Solutions SE	Services Finance	Netherlands	Netherlands and other European countries
NEW YORKER SE (former Blitz 08-851 SE)	Services Commerce	Germany	Germany
Nh-Trans SE	Transport	Czech Republic	Czech Republic, Poland
Nordex SE	Services Finance	Germany	Germany, France, Italy, Ireland, Netherlands, UK
Odfjell SE	Transport	Norway	Norway (600), Netherlands, UK
Odfjell Terminals SE	Other	Norway	Norway, Netherlands, UK
Olivenbauer SE (former Atrium Achte Europäische VV SE)	Food, Hotel, Catering & Agriculture	Germany	Germany
Orchestra Service SE	Services IBITS	Germany	Germany, Austria
PCC SE	Chemicals	Germany	Czech Republic (33), France (3), Germany (136), Latvia, Poland (3,581), Slovakia (3)
Plansee SE	Metal	Austria	Austria (1,333), France (76), Sweden (2), UK (11)
Porsche Automobil Holding SE	Metal	Germany	Germany, France, UK, Ireland, Italy, Austria, Spain, Czech Republic
Prosafe SE	Other	Cyprus	Norway (10), UK (45)
Q-Cells SE	Chemicals, Metal	Germany	Germany (1707), Austria
Ready Made Companies SE	Services Finance	Czech Republic	Czech Republic
REAL Nova Group SE	Services Finance	Czech Republic	Czech Republic

Form of establishment	Form of corporate governance	European works council	Set up of SNB	Agr. Reach	Information and consultation	Participation	Employees concerned	Date of registration
Conversion	One-tier	No	employee involvement was not considered				200 (ca) (2009)	8 October 2005
Conversion	Two-tier	Yes	Yes	Yes	Yes	Yes	6700 (2005)	28 August 2006
Conversion	Two-tier	Yes	Yes	Yes	Yes	Yes	49 000 (ca) (2009)	19 May 2009
Merger	Two-tier	No	Yes	neg. term.			100 (ca) (2008)	11 September 2008
Activated Shelf	Two-tier	No	No				56 (2009)	9 November 2007
Conversion	One-tier	No	Yes	Negotiations failed			307 (2006)	12 August 2006
Subsidiary	Two-tier	No	n/a				250 - (2009)	12 November 2008
Merger	One-tier	No	n/a				10-49 (2009)	25 June 2008
Activated Shelf	Two-tier	No	n/a				10-19 (2009)	20 August 2007
Conversion	One-tier	No	Yes	Yes	Yes	No	322 (2005)	30 September 2005
Conversion	Two-tier	No	n/a				114 (2008)	March 2009
Activated Shelf	Two-tier	No	n/a					16 July 2008
Merger	Two-tier	No	Yes	neg. term.			50-99 (2007)	31 July 2007
Conversion	Two-tier	No	Yes	Yes	Yes	No	2153 (2008)	4 March 2010
Conversion	One-tier	No	Yes	Yes	Yes	No	600 (2007)	23 July 2007
Conversion	One-tier	No	yes	Yes	Yes	No	860 (2007)	23 July 2007
Activated Shelf	One-tier	No	n/a				40 (ca) (2009)	19 September 2006
Activated Shelf	One-tier	No	No				60 (2007)	31 October 2007
Conversion	One-tier	No	Yes	Yes	Yes	No	3756 (2007)	5 February 2007
Conversion	One-tier	No	Yes	Yes	Yes	Yes	1422 (2006)	11 February 2006
Conversion	Two-tier	No	Yes	Yes	Yes	Yes	11 500 (2007)	13 November 2007
Conversion	One-tier	No	Yes	Yes	Yes	Yes	55 (2007)	2 February 2007
Merger	Two-tier	No	Yes	Yes	Yes	Yes	2500 (<) (2007)	23 October 2008
Holding	Two-tier	No	n/a				10-49 (2009)	3 March 2008
Activated Shelf	Two-tier	No	n/a				10-19 (2009)	4 December 2008

	Sector	Headquarters	Concerned countries (number of employees)
Realsan Group SE	Chemicals	Czech Republic	Czech Republic
RKW SE	Chemicals	Germany	Germany, Belgium, Finland, France, Estonia, Spain
RPG Industries SE	Services Finance	Cyprus	Cyprus
sapodo SE	Services IBITS	Germany	Germany
SCA Hygiene Products SE	Chemicals	Germany	Austria, Belgium, Germany (2,859), Netherlands, UK
Schauenburg Technology SE	Chemicals	Germany	Germany
SCOR Global Life SE	Services Finance	France	France, Austria, Germany, Belgium, Estonia, Ireland, Italy, UK, Spain
SCOR Global P&C SE	Services Finance	France	France, Austria, Germany, Belgium, Estonia, Ireland, Italy, UK, Spain
SCOR SE	Services Finance	France	France, Austria, Germany, Belgium, Estonia, IReland, Italy, UK, Spain
SE Sampo Life Insurance Baltic	Services Finance	Estonia	Estonia, Lithuania, Latvia
SEKISUI NordiTube Technologies SE	Other Services	Germany	Germany, Sweden, Belgium
Sevic Systems SE	Metal	Germany	Germany, Luxembourg
SGL Carbon SE	Chemicals, Metal	Germany	Austria (169), Czech Republic (1), France (322), Germany (2891), Hungary (1), Italy (216), Slovakia (1), Spain (239), Poland (1007), UK (330)
SGS Sanders GeoScience SE	Other	Germany	Germany
SOHO Prague SE		Czech Republic	Czech Republic
SOLON SE	Chemicals, Metal	Germany	Germany (420), Austria, Italy
Songa Offshore SE	Other	Cyprus	Cyprus, Norway
SpiritON MEDIA Holding SE	Services Finance	Germany	Germany
Surteco SE	Other	Germany	UK, Italy, Poland, Germany
Swedbank Life Insurance SE	Services Finance	Estonia	Estonia (20), Lithuania (8), Latvia (40)
Swiss Re International SE	Services Finance	Luxembourg	Germany, Netherlands, UK, Switzerland
Sword Group SE	Services Finance	France	France
TENESO Europe SE (previous HITEUROPE SE)	Services Commerce	Germany	Germany
tesa SE	Chemicals, Metal	Germany	Germany (1,947), Italy (229), Spain, UK, France, Belgium, Bulgaria, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Netherlands, Norway, Austria, Poland, Portugal, Romania, Sweden, Slovenia, Slovakia, Czech Republic, Hungary
Testronic Laboratories SE	Services IBITS	Netherlands	Belgium, Poland, UK

Form of establishment	Form of corporate governance	European works council	Set up of SNB	Agr. Reach	Information and consultation	Participation	Employees concerned	Date of registration
	Two-tier	No	n/a				6-9 (2009)	16 June 2009
Conversion	Two-tier	Yes	Yes	fall back position	(Yes)	(Yes)	2221 (2008)	8 October 2008
Merger	One-tier	No	(Yes)	(Yes)	(Yes)	(No)		3 August 2006
Activated Shelf	One-tier	No	n/a				7 (ca) (2009)	1 August 2007
Conversion	Two-tier	Yes	Yes	Yes	Yes	Yes	6444 (2009)	18 September 2009
Conversion	One-tier	No	Yes	Yes	Yes	No	205 (2010)	30 December 2009
Conversion	One-tier	No	Yes	Yes	Yes	Yes	469 (2007)	25 July 2007
Conversion	One-tier	No	Yes	Yes	Yes	Yes	527 (2007)	3 August 2007
Conversion	One-tier	No	Yes	Yes	Yes	Yes	801 (2006)	25 June 2007
Conversion	Two-tier	No	Yes	neg.term.			110 (2007)	12 January 2007
Conversion	One-tier	No	No				10-49 (2009)	31 January 2007
Conversion	One-tier	No	Yes	Yes	Yes	No	100 (ca) (2007)	15 March 2007
Conversion	Two-tier	Yes	Yes	Yes	Yes	Yes	5177 (2008)	23 January 2009
Subsidiary	One-tier	No	n/a					4 November 2008
	Two-tier	No	n/a				20-24 (2009)	2 October 2008
Conversion	Two-tier	No	Yes	Yes	Yes	No	850 (2008)	2 December 2008
Merger	One-tier	No	n/a				25 (2009)	12 December 2008
Activated Shelf	One-tier	No	n/a				12 (ca) (2009)	16 April 2007
Conversion	Two-tier	No	Yes	Yes	Yes	Yes	2 109 (2007)	20 November 2007
Merger	Two-tier	No	Yes	neg.term.			68 (2009)	31 December 2009
Merger	One-tier	No	n/a				250 (or more) (2009)	17 October 2007
Conversion	One-tier	No	n/a				2018 (2008)	12 March 2009
Activated Shelf	One-tier	No	n/a				3000 (ca) (2009)	6 November 2008
Conversion	Two-tier	No	Yes	Yes	Yes	Yes	2700 (2008)	30 March 2009
Conversion		No	n/a				260 (<) (2009)	19 January 2009

	Sector	Headquarters	Concerned countries (number of employees)
T-Group SE	Metal	Austria	Austria, Germany, Hungary
Tipp24 SE	Services Finance	Germany	Austria, Germany, Italy, Spain, UK
transGourmet Holding SE	Food, Hotel, Catering & Agriculture, Services Commerce	Germany	Germany
Trost Auto Service Technik SE	Metal	Germany	Germany
Unibail-Rodamco SE	Services Finance	France	Austria (85), Denmark (21), Spain (128),France (1,070), Netherlands (130), Poland (35), Czech Republic (41), Sweden (152)
unitedprint.com SE	Services Commerce	Germany	18 EU Member States
Vapiano SE	Food, Hotel, Catering & Agriculture	Germany	Germany
vogt group SE	Metal	Germany	Germany (around 70), Spain, UK
Wacker Neuson SE	Metal	Germany	Belgium (16), Denmark (20), Germany (1728), Finland (6), France (53), Ireland (5), Italy (13), Netherlands (39), Norway (7), Austria (421), Poland (64), Portugal (2), Sweden (18), Spain (35), Czech Republic (32), Hungary (15), UK (155)
Wackler Holding SE	Other Services	Germany	Germany
Wamsler SE Household Equipment European Company	Metal	Hungary	Germany, Hungary
WAREMA Renkhoff SE	Metal	Germany	Austria, France, Spain, Germany
WEPA Industrieholding SE (former Blitz F07-zwei-vierundvierzig SE)	Other	Germany	Germany
Wiener Privatbank SE	Services Finance	Austria	Austria, Hungary
WIKA International SE	Metal	Germany	Germany (1,850)
Wilo SE	Metal	Germany	Germany (1,871), France, Ireland
xStudy SE	Other Services	Germany	Germany

Form of establishment	Form of corporate governance	European works council	Set up of SNB	Agr. Reach	Information and consultation	Participation	Employees concerned	Date of registration
Subsidiary	One-tier	No	n/a				9 (2009)	9 February 2008
Merger	Two-tier	No	n/a				>185 (2009)	28 December 2009
Activated Shelf	One-tier	No	n/a				21 000 (2008)	20 November 2008
Merger	Two-tier	No	n/a				4000 (2009)	27 July 2009
Conversion	Two-tier	No	Yes	Yes	Yes	No	1662 (2008)	15 May 2009
Merger	One-tier	No	Yes	neg.term.			400 (ca) (2009)	19 December 2007
Activated Shelf		No	n/a				100 (>) (2008)	18 September 2008
Holding	Two-tier	No	Yes	Yes	Yes	No	160 (ca) (2009)	1 September 2008
Conversion	Two-tier	No	Yes	Yes	Yes	Yes	2629 (2009)	18 February 2009
Activated Shelf	Two-tier	No	n/a				4500 (ca) (2008)	3 November 2008
Conversion	Two-tier	No	n/a				1070 (2007)	31 August 2007
Merger	Two-tier	No	Yes	Yes	Yes	Yes	2600 (>) (2009)	29 July 2009
Activated Shelf	Two-tier	No	n/a					23 January 2009
Conversion	One-tier	No	Yes	neg.term.			204 (<) (2007)	23 August 2008
Activated Shelf	Two-tier	No	n/a				1850 (>) (2008)	1 December 2008
Conversion	Two-tier	Yes	Yes	Yes	Yes	Yes	1871 (>) (2007)	24 July 2008
Subsidiary	Two-tier	No	n/a				8 (ca) (2008)	20 September 2007

Table A2: 'Shelf' SEs

Company	Headquarter	Corporate governance structure	Date of registration
1. európska SE	Slovakia	Two-tier	12 February 2009
2. Leo Vermögensverwaltungs SE	Germany	One-tier	16 December 2008
AE Elfte Vermögensverwaltungs SE	Germany		20 November 2008
AE Zehnte Vermögensverwaltungs SE	Germany		20 November 2008
Aginti SE	Czech Republic	Two-tier	31 October 2008
Atrium 24. Europäische VV SE	Germany	Two-tier	1 April 2010
Atrium 25. Europäische VV SE	Germany		6 April 2010
Atrium 26. Europäische VV SE	Germany		8 April 2010
Atrium 27. Europäische VV SE	Germany		5 May 2010
Atrium Neunte Europäische VV SE	Germany	One-tier	21 April 2006
Atrium Neunzehnte Europäische VV SE	Germany		10 July 2008
Atrium Zwanzigste Europäische VV SE	Germany		21 August 2009
Atrium Zweiundzwanzigste Europäische VV SE	Germany	Two-tier	28 September 2009
B&N Fin Protection SE	Czech Republic	Two-tier	9 September 2009
Barham SE	Czech Republic	Two-tier	25 January 2010
Bestana SE	Czech Republic	Two-tier	6 April 2010
Beteiligungs- und Investment SE	Luxembourg	One-tier	8 September 2005
Blitz 07-243 SE	Germany	Two-tier	24 October 2007
Blitz 10-431 SE	Germany	One-tier	12 January 2010
Blitz 10-432 SE	Germany	One-tier	12 January 2010
Blitz 10-433 SE	Germany		22 April 2010
Blitz 10-434 SE	Germany	Two-tier	12 January 2010
Blitz 10-435 SE	Germany		22 April 2010
Blitz 10-436 SE	Germany		22 April 2010
Bolagsstiftarna International SE	Sweden	One-tier	14 October 2004
Bougainville SE	Czech Republic	Two-tier	2 November 2009
Bromelia Trade SE	Czech Republic	Two-tier	7 January 2010
Capaneus SE	Czech Republic	Two-tier	19 January 2010
CHALLANGER SE	Czech Republic	Two-tier	30 March 2009
Chimeronste SE	Czech Republic	Two-tier	12 May 2010
Comosum Trade SE	Czech Republic	Two-tier	7 January 2010
Czech Power SE	Czech Republic	Two-tier	20 March 2008
Deucalion SE	Czech Republic	Two-tier	7 December 2009
EBD Vierte Verwaltungsgesellschaft SE	Germany	One-tier	3 April 2007
Einhaus SE	Germany	One-tier	27 December 2007
Elodie SE	Slovakia	Two-tier	3 April 2009
Enterpreneur SE	Czech Republic	Two-tier	19 April 2010
European Financial SE	Czech Republic	Two-tier	23 November 2009
Heliodromus SE	Czech Republic	Two-tier	19 February 2010
I.C.E. Innovative Canmakers Europe SE	Germany	Two-tier	26 April 2007
Imperial Standard SE	Czech Republic	Two-tier	12 May 2010
Intrepid SE	Czech Republic	Two-tier	2 November 2009
Lametoran SE	Czech Republic	Two-tier	3 May 2010
Latveria SE	Czech Republic	Two-tier	7 May 2010
Leo Vermögensverwaltungs SE	Germany	One-tier	16 December 2008
Mandritta SE	Czech Republic	Two-tier	12 December 2008
Micunari SE	Czech Republic	Two-tier	2 November 2009
Mollanere SE	Czech Republic	Two-tier	27 May 2010
Mundia SE	Czech Republic	Two-tier	29 March 2010
Nalia SE	Czech Republic	Two-tier	15 September 2009

Company	Headquarter	Corporate governance structure	Date of registration
Nelium SE	Czech Republic	Two-tier	6 April 2010
Nesius SE	Czech Republic	Two-tier	9 December 2009
Pacidic SE	Czech Republic	Two-tier	17 October 2008
Patriciana SE	Slovakia	Two-tier	7 July 2009
Polyten SE	Czech Republic	Two-tier	11 March 2010
Pontal SE	Czech Republic	Two-tier	25 March 2010
Pro-Jura 0507 SE	Germany	One-tier	13 June 2007
Ralb SE	Czech Republic	Two-tier	17 October 2008
Roblen SE	Czech Republic	Two-tier	1 February 2010
Royal Repulse SE	Czech Republic	Two-tier	17 May 2010
Salgari SE	Slovakia	Two-tier	16 October 2009
Sayama SE	Slovakia	Two-tier	27 October 2009
Seadragon SE	Czech Republic	Two-tier	27 April 2010
Shamalgan SE	Czech Republic	Two-tier	30 September 2009
Snowberry SE	Czech Republic	Two-tier	27 April 2010
Solaconer SE	Czech Republic	Two-tier	19 May 2010
Startplattan 39001 SE	Sweden	One-tier	11 November 2004
Startplattan 39002 SE	Sweden	One-tier	11 November 2004
STG Zweite Vermögensverwaltungs- und Beteiligungsgesellschaft SE	Germany	Two-tier	26 June 2008
Sylmarone SE	Czech Republic	Two-tier	17 May 2010
Terona SE	Czech Republic	Two-tier	20 April 2010
Tilburn SE	Czech Republic	Two-tier	10 February 2010
TRINITY CORPORATE SE	Czech Republic	Two-tier	13 October 2008
Tritikale trade SE	Czech Republic	Two-tier	1 December 2009
TwigoNet Europe SE	Czech Republic	Two-tier	15 February 2010
U Zámku SE	Czech Republic	Two-tier	7 November 2008
Volterra SE	Slovakia	Two-tier	17 October 2009
Wallia SE	Slovakia	Two-tier	13 November 2009

Table A3: 'Empty' SEs

Sector	Headquarter	Form of establishment	Corporate governance structure	Date of registration
21 Investimenti Belgium SE	Belgium	Merger	One-tier	19 December 2005
Abatus Holding SE (former Abatus Invest SE)	Germany	Conversion	One-tier	23 August 2007
Algest SE	Luxembourg	Merger	One-tier	11 May 2006
Allpar SE	Austria	Conversion	One-tier	1 September 2008
Alter Bail SE	Luxembourg	Merger	One-tier	15 February 2008
AmRest Holdings SE	Poland	Conversion	Two-tier	19 September 2008
Aqton SE (former Blitz 07-241 SE)	Germany	Activated Shelf	One-tier	3 July 2008
Arcelor Steel Trading SE	Spain	Conversion	Two-tier	11 October 2007
ARTEMIS Global Capital SE	Germany		Two-tier	11 October 2006
Atrium Dritte Europäische VV SE	Ireland	Activated Shelf	One-tier	20 March 2006
Aviva Investment Management Europe SE	Ireland	Subsidiary	One-tier	22 January 2010
Aviva Life & Pensions Europe S.E.	Ireland	Subsidiary	One-tier	22 January 2010
Beiten Burkhardt EU-Beteiligungen SE	Germany	Subsidiary	One-tier	18 November 2005
BIBO ZWEITE Vermögensverwaltungsgesellschaft SE	United Kingdom	Conversion		14 November 2006
bluO SE	Austria		Two-tier	16 May 2007
BOLBU Beteiligungsgesellschaft SE	United Kingdom			11 October 2006
Bombardier Transportation Capital Holding Netherlands SE	Netherlands	Subsidiary	One-tier	26 November 2007
Bombardier Transportation Global Holding SE	Netherlands	Subsidiary	One-tier	26 November 2007
Bombardier Transportation Investments Netherlands SE	Netherlands	Subsidiary	One-tier	26 November 2007
Bombardier Transportation Joint Venture Holding Netherlands SE	Netherlands	Subsidiary	One-tier	26 November 2007
CHAMR Enterprise SE	Czech Republic	Holding	Two-tier	9 June 2008
Deloitte SE	Netherlands	Subsidiary	Two-tier	15 April 2008
Euromater SE	Czech Republic	Merger	Two-tier	12 December 2007
Europea Capital, SE	Czech Republic	Merger	Two-tier	16 May 2007
Eurospolocnosti SE	Slovakia	Subsidiary	Two-tier	21 March 2009
Form Online Holdings SE	United Kingdom	Merger	One-tier	6 February 2009
Fortis Intertrust Corporate Services SE	Netherlands	Subsidiary	One-tier	8 October 2006
Fotex Holding SE Nyrt	Luxembourg	Conversion	One-tier	31 December 2008
Fritrade SE	Denmark	Conversion	One-tier	16 October 2008
Gadus Holding SE	Norway	Holding	One-tier	1 September 2008
Gadus SE	Norway	Holding	One-tier	1 September 2008
Go East Invest SE	Germany	Merger	Two-tier	17 March 2005
Gold Finances Group SE (former SE Reussite Finances Groupe)	Latvia	Subsidiary	One-tier	6 February 2007
Graphisoft SE	Hungary	Conversion	One-tier	27 July 2005
Guardian Middle East & Africa SE	Luxembourg	Merger	One-tier	18 July 2008
Ispire International SE	United Kingdom			10 August 2009
K & S - Dr. Krantz Sozialbau und Betreuung Verwaltungsgesellschaft SE	Germany	Activated Shelf	Two-tier	30 December 2009
Limbach Beteiligungsverwaltung SE	Germany		One-tier	22 December 2009
Limbach Holding Verwaltung SE	Germany		One-tier	22 December 2009
Limbach Labor SE	Germany		One-tier	3 September 2009
LL Global Resources SE	Germany	Activated Shelf		1 February 2008
MAI Luxembourg SE	United Kingdom			2 July 2008
Mainbrain SE	United Kingdom			2 February 2009

Sector	Headquarter	Form of establishment	Corporate governance structure	Date of registration
MatMar SE	Austria	Holding	One-tier	1 February 2006
MDM Holding SE	Cyprus	Merger	Two-tier	17 January 2007
MPIT Structured Financial Services SE	Netherlands	Subsidiary		8 October 2004
MS Holding II SE	Germany	Activated Shelf	One-tier	17 August 2009
MS Holding III SE	Germany	Activated Shelf	One-tier	17 August 2009
MS Holding SE	Germany	Activated Shelf	One-tier	7 August 2008
MS Holding Verwaltungs SE	Germany	Activated Shelf	One-tier	17 June 2009
New Action SE	United Kingdom			2 April 2009
NGN-Europe SE	Germany	Activated Shelf	One-tier	28 May 2008
Nyckel 0328 SE	Sweden	Conversion	One-tier	5 December 2008
Pacelli SE	Germany	Activated Shelf	One-tier	17 October 2008
PAYPAL SE	United Kingdom	Subsidiary		30 September 2008
Powergen LS SE	United Kingdom			6 August 2008
PRESQUE TOUT... (L'UNIVERS) (former Culture Commune SE)	Belgium	Subsidiary	One-tier	31 July 2006
Prime Direct SE	United Kingdom			2 April 2009
Pro-Jura SE Europäische Aktiengesellschaft	Germany	Subsidiary	One-tier	26 February 2007
Profireal Group SE	Netherlands	Merger	One-tier	21 December 2007
RSL COM Germany SE	United Kingdom	Activated Shelf		1 October 2007
S.K. Holding SE	Germany	Activated Shelf		17 October 2008
SAB Emissionshaus SE	Germany	Activated Shelf	One-tier	20 January 2010
Schering-Plough Clinical Trials SE	United Kingdom	Subsidiary	One-tier	22 February 2005
SCOR Global Investments SE	France		Two-tier	2 February 2009
SCS Europe SE	Netherlands	Subsidiary	One-tier	8 October 2004
Soffice SE (former Nalia SE)	Czech Republic	Activated Shelf	Two-tier	18 September 2007
Solar Equity SE (former Atrium Siebte Europäische VV SE)	Germany	Activated Shelf	One-tier	13 September 2007
Solar Invest SE (former Atrium Sechste Europäische VV SE)	Germany	Activated Shelf	One-tier	13 September 2007
Swarco Innovia SE	Austria	Holding	Two-tier	4 September 2007
Tchibo (Austria) Beteiligungsinvest SE	Austria	Subsidiary	Two-tier	14 December 2006
TCN Urop SE	Netherlands	Conversion	One-tier	22 December 2006
TheronMedical SE	Luxembourg	Merger	One-tier	30 October 2009
Top Deal Telecom SE	United Kingdom			27 July 2009
Torria SE	Slovakia	Subsidiary	Two-tier	10 April 2008
Tourism Real Estate Property Holding SE	Netherlands	Subsidiary	One-tier	29 September 2005
Tourism Real Estate Services Holding SE	Netherlands	Subsidiary	One-tier	29 September 2005
UBM International Holdings SE	United Kingdom			2 July 2008
United Consumer Media SE	United Kingdom		One-tier	14 July 2008
UPRN 1 SE	Netherlands	Conversion	One-tier	21 April 2008
Vale Comercio International SE	Denmark	Conversion	One-tier	12 April 2010
World Nordic SE	Cyprus	Conversion	One-tier	29 May 2007

Overview of case studies carried out in the context of the project

Company	Author
Allianz	Volker Telljohann
BASF	Udo Rehfeldt
Equens	Kim Schütze / Eckhard Voss
Elcoteq	Lazlo Neuman
Fresenius	Kim Schütze
GfK	Lionel Fulton
Hager	Eckhard Voss
MAN	Udo Rehfeldt
SCOR	Udo Rehfeldt
STRABAG	Eckhard Voss

European Foundation for the Improvement of Living and Working Conditions

Employee involvement in companies under the European Company Statute

Luxembourg: Publications Office of the European Union

2011 – VIII, 94 p. – 21 x 29.7 cm

doi: 10.2806/22977
ISBN 978-92-897-0881-4

SALES AND SUBSCRIPTIONS

Publications for sale produced by the Publications Office of the European Union are available from our sales agents throughout the world.

How do I set about obtaining a publication?

Once you have obtained the list of sales agents, contact the sales agent of your choice and place your order.

How do I obtain the list of sales agents?

- Go to the Publications Office website: http://www.publications.europa.eu/
- Or apply for a paper copy by fax (352) 2929 42758

EF/10/78/EN

4 5 TJ-32-10-526-EN-C

A European Company (Societas Europaea, SE) is a relatively new legal form of company operating on a Europe-wide basis. The EU legislation governing the formation and operation of such companies also stipulates the need for employee involvement, in the form of information, consultation and participation. This report uses 10 company case studies and a review of legislation and literature to examine the current state of play regarding SEs and the nature and extent of employee involvement in them. The analysis of company cases indicates that employee involvement is widely regarded as an integral part of corporate governance in the EU.

Publications Office

doi: 10.2806/22977

ISBN 978-92-897-0881-4