

Dossier

Representation of European workers: the European Company or 'Societas Europaea' (SE)

We are coming across the expression 'European Company' or its acronym 'SE' more and more frequently, alongside the names of major enterprises, such as **Allianz SE, Strabag SE, SCOR SE, Fresenius SE or Porsche SE.**

What does this mean exactly? **What is a 'European Company'? What are its implications for European workers, and in particular, for their rights to information, consultation and participation within the enterprise?**



This dossier will endeavour to answer these questions and will concentrate on the **definition of the 'European Company', its impact on the cross-border representation of workers within enterprises** and the issues involved.

The emergence of the 'European Company'. Its advantages.

Under Regulation EC 2157/2001 and the directive on worker involvement, 2001/86/EC, a European Company (SE)¹ is a limited liability company governed by Community law directly applicable to all the Member States. It can be set up by enterprises on a voluntary basis only within the territory of the European Union. Since October 2004, the date of the entry into force of the European legislation, at least 96 SEs have been set up, affecting over 300,000 workers in 17 European countries.

Without going into the details of the creation of an SE, **what is fundamentally new is the transnational character of the composition of an SE** (the setting up of an SE must affect companies in at least two EU Member States), the possibility to merge with other companies **and the possibility of changing its headquarter together with the registered seat more flexibly within the EU.**

The creation of a legal framework allowing the establishment of an SE may have significant advantages for enterprises operating in the internal market. The point is that it reduces the costs of the administrative and legal procedures².

At the same time, the setting up of an SE opens up a new area of action for the representation of European workers within multinationals.

¹ The acronym 'SE' refers to the Latin name 'Societas Europaea', applicable throughout the European Union.

² Administrative simplification and cost reduction are not the only elements behind the choice of an SE. Some companies prefer to opt for this solution to show their European identity in the framework of an internationalisation strategy.

Dossier

Worker representation within an SE

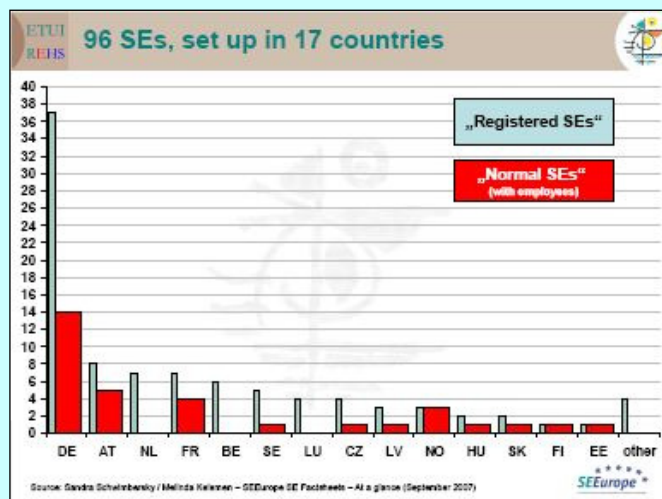
The regulation creating the SE was accompanied by a **directive 'supplementing the Statute for a European company with regard to the involvement of employees'**. Because of the existence of this text, **an SE cannot be set up without an agreement concerning worker involvement³**.

According to the said directive, **worker involvement includes the rights to information, consultation and participation**, through which employees' representatives 'may exercise an influence on decisions to be taken within the company' (Art. 2, Dir. 2001/86/EC).

In this way, the representatives of workers within an SE (**SE Works Council**) are informed in time about questions relating to the company, and can express their opinions. In cases where the provision of board level representation pre-existed (this is the case in 18 out of 27 EU member states and in Norway) and were applied in practice, the SE-legislation provides for a "before-after principle" which means the employees in such SEs have the right to elect or appoint some members of the Board (participation).

The directive on SEs thus creates an additional layer of European representation. These provisions remain fundamental to the European trade union movement, and **open up a fresh perspective for transnational representation of workers in enterprises.** Thanks to the advent of the SE, [as is the case with Allianz](#), a system which also operates in countries where the existing provisions are more restrictive, the representation of workers' interests is expanding.

Some problems persist



The setting up of SEs does sometimes raise some problems.

Even if the European legislation is trying to ensure that the constitution of an SE is not used unfairly to evade rights to representation, it does only define what happens at the time when the company is founded, without saying clearly what will happen afterwards. For example, there would be a problem if an SE, with no agreement governing worker involvement, were to acquire another company which did have participation.

In parallel, a large number of SEs with no workers ('shelf SEs' or 'empty SEs') have been set up⁴.

³ In line with the directive, if the management and the employees do not succeed in securing an agreement, minimum standards of representation will be applied.

⁴ To justify this situation, the founders of these 'shelf SEs' state that they have no employees on their establishment site.

Dossier

The point is that out of the **96 SEs registered to date, we find that only 32 have concluded, or striven to conclude, an agreement on worker participation.** This means that the national bodies have often registered SEs which have **not provided proof of the involvement of their workers, and how that involvement should be organised,** which is at odds, according to the European trade union movement, with the European rules introducing the SE.

The state of a company on its creation is currently fundamental for the future of the rights of the workers within that company. What would happen if an SE with no workers, and thus with no provision regarding their representation, were subsequently to acquire a company which did employ people? Under that sort of scenario – which has never yet arisen – the SE would be subject to the application of the provisions in force in the acquiring company, where **no worker involvement would be ensured.**

The information on SEs provided by the Member States is often **partial and limited,** the enterprise's corporate purpose is not even mentioned and there is no information regarding the setting in place of an agreement on worker representation.

With the imminent implementation of the directive on cross-border mergers (2005/56/CE) in December 2007, we are anticipating an increase in the number of European enterprises making use of the European legislation to flexibly cross over intra-Community borders.

The uncontrolled application of the European legislation on SEs might be used to crush rights which already exist under national law, notably in the case of 'shelf SEs'. The ETUC condemns the fact that an SE can be created without providing proof of a commercial activity.

The commitment by the European trade union movement

Despite these problems, **we can list some very important positive examples for European workers employed in SEs.**

The example of **Allianz SE** illustrates this situation: the agreement on **worker involvement within the SE has meant that each of the 160,000 or so employees benefits from effective participation rights.** On the supervisory board of Allianz SE, we find representatives of workers of German, French and English origins, exercising a European mandate.

The case of **SCOR SE**, a new European company based in France, is equally emblematic: **two workers' representatives were accepted on to the board when the SE was set up, whereas French legislation did not provide for this.**

There has been a sizeable step forwards for many workers who previously lacked such rights at the national level in the enterprise.

While taking account of the great potential that exists for the transnational representation of workers within an SE, the European trade union movement remains vigilant regarding the concrete application of the European legislation.

Dossier

The European trade union movement has asked the European Commission to **pay very close attention to the application of the European legislation on companies** and to **set up a register of SEs** which, for the sake of avoiding any abuses, would provide details on the enterprises set up pursuant to the European legislation. **This register should also indicate whether an agreement with the workers exists, and if so, on which subjects.** European legislation must ensure that there are no loopholes which would allow enterprises to evade the existing participation rights. In line with the [plan of action approved by the Congress in Seville](#), *the ETUC will demand that the European Commission put in place a mechanism which can guarantee the principle of "portability" of existing workers' participation rights in all cases of mobility of the company or parts of it'. According to Reiner Hoffmann, ETUC Deputy General Secretary "obligatory workers' involvement at company level makes EU social model visible for employees and brings European citizenship down to the workplace. Agreements reached in important companies to establish an SE prove that worker involvement is not the devil for companies or investors".*

Useful links:

- [Section of the ETUC site on 'Participation, information and consultation of workers'](#);
- [Site of the European Trade Union Institute for Research, Education and Health and Safety ETUI-REHS\) dedicated to worker participation in Europe;](#)
- [Benchmarking Working Europe 2007](#)
- [FAQ on the European Company;](#)
- [Interview with Geoff Hayward, representative of the workers on the supervisory board at Allianz SE](#) (Also available in [German](#))

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