THE EUROPEAN COMPANY - PROSPECTS FOR BOARD-LEVEL REPRESENTATION

EUROPEAN TRADE UNION INSTITUTE (ETUI) AND HANS BÖCKLER FOUNDATION
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HOW TO USE THE BOOKLET - EDITORS' REMARKS

The purpose of this booklet is above all practical: it is intended for everyone who needs information about, and overviews of, existing systems of board-level representation of employees in the EU countries, prior to the advent of the European Company (SE). The idea is to give readers an early insight into the national backgrounds and experience of those colleagues who will sit down with management at the negotiating table once worker participation in the executive bodies of the SE becomes a reality.

The EU Council of Ministers adopted the EU regulation on the European Company Statute in October 2001, along with the accompanying EU directive on employee involvement in the SE[1]. These texts will enter into force in October 2004, by which time the directive must have been transposed into national law in all the EU member states - 25 by then – plus Norway, Liechtenstein and Iceland as members of the European Economic Area. The SE directive takes employee participation within companies one step further forward. It goes beyond the local and national representation of workers' interests, providing scope for a sort of *European Works Council Plus* (co-determination).

This booklet sets out to ensure that opportunities for co-determination really are created in the executive bodies of the SE. To this end, negotiations will be held and an agreement reached between the "special negotiating body" and the employers before the establishment of the SE.

The booklet is based on the results of a project conducted in 2003. It was carried out jointly by the Hans Böckler Foundation (Germany), SYNDEX (France) and the European Trade Union Institute, together with their partners the Labour Research Department (GB) and Sindnova (Italy). Information about systems of board-level representation of employees throughout Europe was pooled at three seminars and in 15 country reports. The project was funded by the EU Commission under budget line B3-4003[2].

1 The wording of these documents can be found in the Annex.
2 The project was entitled "Prospects for participation and co-determination under the European Company Statute – An Overview".

The British journalist and economist *Robert Taylor* has provided us with an overview on board-level representation in Europe and has also distilled the country descriptions into a brief summary[3]. In addition, an assessment of the situation in the ten new EU member states has been carried out at the European Trade Union Institute by *Norbert Kluge* and *Michael Stollt*.

The introductory section, providing information on the subject “What is a European Company (SE) ?”, has been written by company lawyer *Roland Köstler*. The economist *Martin Wenz* describes possible advantages of setting-up an SE from a company perspective. *Walter Cerfeda*, who is responsible for the field of industrial relations in the secretariat of the European Trade Union Confederation (ETUC), emphasises in his contribution the political significance for the European trade union movement of workers’ participation in the SE.

Crucial contributions to the success of the booklet have been made by *Simon Cox* and *Michael Stollt*, who supported the editors in terms of both content and technical assistance. The layout and printing were carried out by *Jean Pierre Nyns* of the agency publiset (Brussels). *Janet Altman* was responsible for translation to English where necessary.

Finally, we are grateful to everyone who provided country reports[4] and to all those trade unionists and workplace representatives who contributed to the success of the project by participating in the seminars.

Rolf Simons
Hans Böckler Foundation

Norbert Kluge
European Trade Union Institute

Brussels and Düsseldorf, March 2004

3 The complete version of the country reports can be downloaded from the website www.seeurope-network.org
4 The list of country experts can be found in the Annex.

THE MEANING OF WORKERS' INVOLVEMENT IN THE EUROPEAN COMPANY FROM A TRADE UNION PERSPECTIVE

BY WALTER CERFEDA

THE MEANING OF WORKERS' INVOLVEMENT IN THE EUROPEAN COMPANY FROM A TRADE UNION PERSPECTIVE

Worker participation in companies nowadays has a significance altogether different from that seen in Europe's recent social history. Analysis reveals that a model of participation and a competitive model are in fact two sides of the same coin. These two models may either converge or conflict at different points in time, the coherence or incoherence always ultimately being determined by the economic cycle. When the economy is going through a healthy phase, redistribution policies - whether related to incomes or to corporate power - are much more moderate than during recessions or economic crises. Indeed, at times of crisis companies tend to regard participation or concertation procedures as a burden or a nuisance to be dispensed with if at all possible. Naturally, it is far easier to follow such a strategy in countries where the right to participation is governed by contractual relations rather than by legislation. But even where there is legislation, although they cannot circumvent the legal provisions, companies attempt to fulfil their obligations more in a formal sense than in substance.

Therefore the right point of departure when gauging the state of health of industrial relations is always an assessment of the economic cycle. And it is here that the full complexity of the rules on participation laid down by the directive on the European Company Statute becomes apparent. It is easy to grasp the contradiction between a directive planned, discussed, approved and adopted during a phase of strong growth in the European economy, and the need for that directive to be transposed and then implemented during a sharp slowdown in the economic cycle.

There is a crisis, and it is a severe one. The most worrying aspect is the structural gap in competitive terms between Europe and its competitors on world markets, which is widening as the months go by. As is well known, the marked economic slowdown began roughly three years ago. But whereas the United States has reacted with a series of measures aimed at reviving growth, that has not happened here. There, for example, the government has stepped in and invested huge sums in research and technological innovation, amounting to almost 4% of GDP on average; here, by contrast, the average investment rate has been just 1.3% per annum. Consequently, of course, the productivity rate per unit of production has grown by almost 4.5% per annum in the USA, but by only 1.2% in Europe. There, the state has supported domestic demand and consumption in an anticyclical fashion; here, the rules of the Stability Pact have discouraged any such action. Likewise, the US Federal Reserve has supported the recovery through its interest rate strategy; here the ECB has not done so, partly because its statutory function is merely to keep inflation under control and not to sustain the economic cycle. Lastly, in the USA the response to the crisis has consisted of just one economic policy, whereas in Europe there have been 15 and very soon, I fear, 25 economic policies. Therefore the outcome could have been nothing other than what has in fact come about, namely serious difficulty for Europe in emerging from the crisis and a widening of the competitive gap with the most advanced economies.

What we now need to analyse are the social consequences gradually brought about by this situation. Unfortunately the consequences are relatively straightforward: since businesses are unable to compete on quality and technological innovation, they have attempted to do so by cutting fixed costs, beginning with labour costs. Such a course of action has been facilitated by the fact that most governments have not only endorsed it but have even offered it legislative backing. This is the case in Portugal, Italy, Spain and Germany as concerns the labour market; it is the case in Austria, France, Italy and Germany as far as welfare provision is concerned, and pensions and health care in particular; and it is the case for the proposals put forward by the French, German and Italian governments to reform bargaining systems and scale down the importance of collective labour agreements, and so the list goes on.

The Community level is not immune to these adverse developments. Indeed, not only has the Lisbon strategy remained a dead letter, but the legislative process itself has been broken off. In terms of legislation on participation, following the adoption during the 1990s of the directives on European Works Councils, information and consultation, and also the European Company Statute, the process has come to a halt. It is rather like having to come to terms with a second generation of initiatives in the field of industrial relations, but one very different in nature from the first. The directive on takeover bids, for instance, makes no provision for the right of worker representatives to be consulted, merely providing them with information about the bid after the event. By the same token, the mergers directive not only substantially weakens the right to information and consultation but actually downgrades the mechanisms for participation. Similarly, the Commission Communication on corporate governance makes no reference whatsoever to workers or trade unions, at the very time when we are seeing a proliferation of scandals in Europe as elsewhere - the latest being the Parmalat case - with workers as well as savers likely to pay the highest price. The lengthy debate about corporate social responsibility has cast very little light on the relationship between legislation and voluntary codes of behaviour drawn up by companies. Finally, the Commission is resisting pressure to launch a formal procedure for revision of the EWC directive, despite formal pronouncements in the European Parliament and the Economic and Social Committee, as well as the repeated position papers and insistence from ourselves.

This is the scenario facing us. We believe that the strategy currently being pursued in Europe is a tragic mistake. Our continent will never achieve a decent share of world markets by competing on cost. For us there is no alternative to the Lisbon strategy. In the context of increasingly fierce and problematic globalisation, we can compete only on grounds of quality and social cohesion. The best chapters of our economic history and our greatest market successes have always been attributable to production quality. Leading European nations, such as Germany, have built their reputations for excellence in a competitive world on the basis of their background in co-determination and rigorous, detailed economic and social regulations. What is more, industrial science confirms that the only key to achieving market success is a close connection between quality of work and product quality. It is likewise obvious that, in a highly changeable and unstable global market, it would be a tragic mistake for companies to add social instability to these other forms of instability. Restructuring processes become unmanageable if companies have to cope not only with changes in production but also with opposition from the workforce. In actual fact, participation lends a competitive edge and is definitely not an undesirable burden or cost.

For this reason, the transposition of the directive on the European Company Statute is becoming a sort of litmus test on the future of participation. That is one reason why we at the ETUC have invested a good deal in this policy issue: we certainly have no intention of allowing transposition to turn into a free-for-all, whereby each country decides individually whether or not to transpose the directive or does so by watering down its content. No, we shall keep the implementation of the directive under careful scrutiny and shall be quick to denounce any attempt to lessen its impact. We believe this to be crucial, not least so as to give meaning to the forthcoming enlargement of Europe and the accession of so many new member states where models of participation are weak or even non-existent in several cases. The new Europe must be seized on as an opportunity to radiate the best parts of our history of well-established industrial relations, albeit gradually. Clearly we are not thinking of somehow standardising wages or working time arrangements, but a harmonisation of the model of social dialogue and participation certainly is on our agenda.

"The Xth Congress commits the ETUC to: [...]

- **Develop, with the European Industry Federations, a common strategy for the practical implementation of worker participation in the European Company (SE), and ensure European mandating of workers' representatives to managerial or supervisory boards)**
- **Ensure that a high level of worker participation will be guaranteed in the European Company and that there will be no possibility of opting out"**

ETUC Action Programme, adopted at the 10th Statutory Congress (26-29/05/2003, Prague), p. 25

This our firm intention, in keeping with the model of Europe which we in the ETUC wish to create. We are convinced that Europe, the Europe of today and even more so that of tomorrow, with 25 member states, can and must constitute an important, positive point of reference in our globalised world. Europe's model of competition, its social model, its tradition of regulation and of social and civil dialogue and even its model of society must not be standardised in deference to the free market philosophy which, it seems, is set to pervade the entire world. On the contrary, we believe that the European model constitutes an alternative model of globalisation, one which shows respect for the environment, respect for human rights, respect for employee participation and for social cohesion.

We therefore see it as a priority to fashion a European culture, a European way of thinking, a European pattern of behaviour, and we certainly do not regard the transposition of the SE directive as a merely technical operation. Rather, the SE represents first a break with, and then an evolution of, national entrepreneurial models. Of course, the vigour of financial markets, the rapidity of capital movements, and mergers are on today's agenda. But these transformations are likely to mean that enterprises are no longer either national or European. The aim of the SE is this: to create a production environment that is distinctly European. It is a valuable aim in that the SE directive inextricably comprises two sides of the same coin - competitiveness and participation - two sides for which balance and compromise are always required if a company is to be well managed.

Thus, participation does not just mean defending structures which are important to the trade union movement. Participation is not a thing of the past. To safeguard structures for participation and extend them to each and every workplace is undoubtedly to safeguard the very essence of our working lives. Without bodies for their representation and participation, trade unions would soon become virtual organisations, rootless and powerless. By the same token, worker representation within an SE or within an EWC cannot just be a projection of purely national interests in a European key. This is obviously an ever present and increasingly prevalent risk. It affects us and it affects everyone, even governments: namely the temptation to think of Europe's role as being additional to that of national governments - a Europe without any real powers, which merely co-ordinates national policies, rather than a federal-type Europe with specific responsibilities and a duty of subsidiarity in respect of national competence. It would truly be economic suicide for Europe to think of competing in the globalised world merely as if it were a single country or a single enterprise.

In the Europe to which we aspire, therefore, companies need to have a European dimension, with an expressly European presence and representation for workers and trade unions, with employee representatives who no longer operate on the basis of the sum of their individual mandates and interests but who have a fully-fledged European mandate to safeguard European interests for the common good. This is true now of the SE, but in the near future it will apply equally to the co-ordination of supranational collective bargaining throughout the new Europe of 25. The game being played out here is therefore crucial; it is one that we intend to play until the very end, and to win.

WHAT IS A EUROPEAN COMPANY (SE) ?

WHAT IS A EUROPEAN COMPANY (SE) ?

Diagram 1

European Company Statute (SE)

Overview of the European Company Statute

Regulation on the Statute for a European Company and Directive with regard to the involvement of employees (of 08.10.2001/ Transposition: 3 years)

Individual forms

Choice of system and organs

Employee involvement

We will start by describing the individual forms the SE can take and steps involved, and will then look at the choice of system and the resulting issues for the organs of the company. Finally, we will look at employee involvement in the SE (agreements and standard rules).

Formation and transfer of registered office

General Regulations

Commercial companies may be set up within the territory of the European Community[1] in the form of European public limited-liability companies (hereinafter referred to as SEs) under the provisions laid down in the Council Regulation on the Statute for a European Company (hereafter referred to as the Regulation) (Regulation, Art.1, Para.1).
The SE is a company whose capital is divided into shares and which constitutes a legal person. The capital of the SE is quoted in euro and must be at least EUR 120,000.
The **registered office of the SE** must be located in the European **Community** in the same member state in which the **head office** is located. A member state may in addition impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place (Regulation, Art. 7).
Once the **registered office** of an SE has been established, it may be **transferred** to another member state. Such a transfer may not result in the winding up of the SE or in the creation of a new legal person (details are provided after the description of the basic forms under point 5 below).

1 To be more precise: The European Economic Area, i.e. the EU member states plus Norway, Iceland and Liechtenstein.

The name of an SE must be preceded or followed by the **abbreviation "SE"** (Regulation, Art. 11). Every SE is registered in the member state in which it has its registered office, in a register designated by the law of that member state (Regulation, Art. 12, Para. 1). An **SE may not be registered unless an agreement on arrangements for employee involvement** pursuant to Article 4 of the Directive has been concluded. Or, to put it simply, unless one of the exceptional situations exist (Regulation, Art. 12, Paras. 2 & 3). Details are provided below in the chapter on "Employee Involvement". What is important is that the statutes of the SE must not conflict at any time with the arrangements for employee involvement. If necessary, the statutes have to be amended after agreement has been reached (Regulation, Art. 12, Para. 4).

Types of company

Diagram 2

European Company Statute (SE)

Ways of forming an SE

Merger	Public limited-liability companies from two member states can form an SE by merger
Holding	Public and private limited-liability companies from two member states can form a Holding
Subsidiary	Any legal entities governed by public or private law from two member states (or an SE itself) can form a subsidiary-SE
Conversion	A public limited-liability company can convert into an SE if it has had a subsidiary in another member state for 2 yrs

Article 2 of the Regulation, lays down in detail what types of company may be involved in the formation of an SE. As can be seen from diagram 2, there is, to some extent, a descending order involved:
Whereas formation by merger is only available to public limited companies[2] , in the case of the other forms, private limited-liability companies[3] and even companies and firms within the meaning of Paragraph 2 of Article 48 of the EU Treaty as well as other legal bodies governed by public or private law may be involved. What all types of formation have in common is a **cross-border element**: at least two of the founding companies must be governed by the law of different member states. This applies to some extent even in cases where it is merely the legal form that is being altered. This so-called transformation is restricted to public limited-liability companies, but is only possible if for a period of at least two years the company concerned has had a subsidiary company governed by the law of another member state (Regulation, Art. 2, Para. 4).

1. Merger

This mode of establishment - as already mentioned - is only permitted for public limited-liability companies and is familiar in both variants from national conversion law:

- the **merger can take the form of the acquisition** of an entire public limited-liability company by another or
- it can take the form of a **new company resulting from a merger** of both public limited-liability companies to form an SE (cf. Regulation, Art. 2, Para. 1, Art. 17).

Thus, depending on the approach taken, there can be problematic consequences for the national public limited-liability companies responsible for setting up the SE. In the one case, following registration and completion of the merger, the national public limited-liability company ceases to exist (Regulation, Art. 27, 29, Para. 1). In the other case, the two national public limited-liability companies that are merging both cease to exist (Regulation, Art. 29, Para. 2; on the subsequent creation of the SE see Regulation, Art. 17, Para. 2).
According to Art. 29, Para. 4 of the Regulation, the rights and obligations of the participating companies on terms and conditions of employment arising from

2 For this, see list in the Annex to the Regulation, Official Journal L 204/19 (the wording of this document can be found in the Annex of this booklet)
3 Annex II Official Journal L 204/20 (the wording of this document can be found in the Annex of this booklet)

national law, practice and individual **employment contracts** or employment relationships that exist at the date of registration of the SE are **transferred to that SE upon its registration.**
The individual steps in a formation of an SE through merger are presented in box 1:

Box 1

Steps in a merger (acquisition and new formation)

- The management or administrative organs of the merging companies draw up draft terms of merger (Regulation, Art. 20)
  These include:
  - the name and registered office of each of the merging companies together with those proposed for the SE
  - the statutes of the SE (thus also the decision as to whether it is to have a one-tier or two-tier structure)
  - information on the procedures by which arrangements for employee involvement are determined
- Publication of the draft terms of the merger
- Commencement of negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE (Directive, Art. 3, Para. 1) by the management or administrative organs of the companies involved (up to six months or one-year)
- Examination of the draft terms and report to all the shareholders
- Agreement or standard rules (Directive, Arts. 4 , 7)
- The General Meetings of each of the merging companies approve the draft terms of merger (Regulation, Art. 23)
- Examination of the legality of the agreement (Regulation, Arts. 25, 26)
- Registration of the SE (Art. 27) and cessation of the merging companies

2. Holding

Public limited-liability companies and private limited-liability companies formed under the law of a member state that have their registered office and head office within the Community may promote a formation of a Holding SE provided that at least two[4] of them

a) are governed by the law of different member states or
b) have for at least two years had a subsidiary company governed by the law of another member state or a branch situated in another member state (Regulation, Art. 2, Para. 2).

In Art. 32 of the Regulation, in which the requirements for the formation of a Holding SE are laid down, it is explicitly stated that the companies promoting the formation continue to exist. However, one should be aware that the **Holding SE represents a new entity**, which to some extent is **superordinate to the companies forming it**. Formally speaking, national employee rights to involvement remain both at plant level and also in the organs of the companies which, after the Holding has been set up in, only continue to exist as subsidiaries (cf. also Directive, Art. 13, Para. 3). In practical terms, however, central decisions are likely to be made at the level of the Holding and take effect from there. The individual steps in the formation of a Holding SE are presented in box 2:

4 This should be taken literally.

Box 2

Steps in the formation of a Holding SE

- The management or administrative organs of the companies promoting the formation of a Holding SE draw up draft terms for the formation (Regulation, Art. 32, Para. 2)
  These include:
  - A report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the adoption of a Holding SE
  - Particulars (Regulation, Art. 32, Para. 2 with reference to Art. 20)
    - name and registered office (Art. 20, Para. 1a)
    - statutes (Art. 20, Para. 1b)
    - details of the procedures for concluding the agreement to honour employee involvement
    - the minimum proportion of shares to be contributed
- Publication of the draft terms (1 month) (Regulation, Art. 32, Para. 3)
- Commencement of negotiations with the representatives of the companies' employees on arrangements for the involvement of employees (Directive, Art. 3, Para. 1) (up to six months or 1 year)
- Examination of the draft terms of formation and written report for the shareholders (Regulation, Art. 32, Para. 4)
- Agreement or standard rules (Directive Arts. 4 and 7)
- General meetings of each company promoting the operation approve the draft terms of formation of the Holding SE and the agreement on employee involvement (Regulation, Art. 32, Para. 6)
- Examination of the legality of the holding formation (Directive, Art. 33)
- Registration of the SE (Art. 16)

3. Subsidiary SE

In Section 4 of the Regulation there are only two articles directly related to this: Article 35 refers to the general regulation laid down in Article 2, Para. 3, and Article 36 refers to the regulations on setting up a subsidiary in the form of a public limited-liability company under national law. According to this, companies and firms within the meaning of Article 48, Para. 2 of the EU Treaty and other legal bodies governed by public or private law formed under the law of a member state with registered offices and head offices within the Community may form a **subsidiary SE by subscribing for its shares**, provided that at least two of them

a) are governed by the law of a different member state or

b) have for at least two years had a subsidiary company governed by the law of another member state or a branch situated in another member state.

The individual steps involved in setting up a subsidiary SE are summarised in box 3:

Box 3

Steps towards setting up a subsidiary SE

- Agreement on a plan for the establishment of a subsidiary SE (see Directive, Article 3)
- Commencement of negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE (up to six months or one-year) (Directive, Article 3, Para. 1)
- Report on establishment/ split
- Examination
- Agreement or standard rules (Directive, Arts. 4 & 7)
- Submittal of registration
- Registration

Setting up of a subsidiary SE by an SE

According to Regulation, Article 3, Para. 1, the SE itself is one of the legal persons entitled to establish an SE under Regulation, Article 2, Paras. 1 to 3. Article 3, Para. 2 even allows the SE itself to set up one or more subsidiaries in the form of SEs.

4. Conversion/change of legal form

This mode of establishment was controversial right up to the end, as there are special problems associated with it. A public limited-liability company formed under the law of a member state, which has its registered office and head office within the Community, may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another member state

(Regulation, Art. 2, Para. 4); in other words existence of a branch in another member state is not sufficient. Of crucial significance for such cases is the fact that Article 37, Para. 3 expressly states that the **registered office** of the company may not be transferred from one member state to another at the same time as the conversion is effected.
Box 4 once again provides an overview of the process involved:

Box 4

Steps towards conversion into an SE

- The management or administrative organ draws up draft terms of conversion These include a report that:
  - explains and justifies the legal and economic aspects of the conversion and
  - indicates the implications for the shareholders and employees of the adoption of the form of an SE.
- Commencement of negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE (up to six months or one-year) (Directive, Article 3, Para. 1)
- Publication of the terms of conversion (at least one month before the General Meeting)
- Examination of the terms
- Agreement on employee involvement (in terms of competencies, at least the same level must be provided for as prior to the conversion (Directive Art. 4, Para. 4)
- General meeting agrees to conversion and approves the statutes
- Registration as an SE

5. Transfer of registered office

Part of the idea of a European Company is that its supra-national, European legal form should mean that it is easy for it to transfer its registered office within the Community. It should, however, be pointed out that the **registered office of the SE** must be located within the Community in the same member state as its **head office**. In addition, a member state may impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place (Regulation, Art. 7). Article 8 of the Regulation, provides detailed requirements related to transfer of the registered office of an SE from one member state to another. In Art. 80, Para. 1, the crucial legal implications of such a transfer are explicitly stated: it does not result in the **winding up of the SE or in the creation of a new legal person**. This means that it is not possible to wind up the SE and uncover undisclosed reserves and there is no need for the relevant national procedures to be used to set up a new legal person across the border. Box 5 provides an overview of the details:

Box 5

Steps towards transfer of registered office (Regulation, Art. 8)

- Transfer proposal with details of:
  - the proposed new registered office
  - the proposed statutes of the SE including, where appropriate, its new name
  - any implications that transfer may have for employee involvement
  - the proposed transfer timetable
- A report drawn up by the management or administrative organ explaining
  - the legal and economic aspects of transfer and
  - the implications of the transfer for shareholders, creditors and employees
- An opportunity for shareholders to examine the report (within two months at the earliest), decision to transfer by General Meeting
- "Deregistration" in original location
- "New registration" in new member state

Construction and organs

Every SE initially has a **General Meeting of shareholders** (Regulation, Art. 38 a) and, in addition to this, a decision is made via the statutes (which therefore can, depending on the circumstances, be further changed at a later date as a result of amendments to the statutes), as to **whether or not the SE has a two-tier** (Management Board and Supervisory Board) **or one-tier** (Administrative Board) system. Such a choice already exists, for example, in France.

In addition, in Art. 39, Para. 5 and Art. 43, Para. 4, the Regulation provides for a member state, in implementing the Regulation, to adopt the appropriate measures in relation to SEs where no provision is made for the one or the other model under the national system applicable on its territory.

Section III of the Regulation (Art. 38 ff.) starts with regulations on the two-tier system, followed by regulations on the one-tier system (Regulation, Art. 43 ff.) and then the rules common to both systems (Art. 46 ff.). These will be briefly explained in the next section.

1. Two-tier system

The unique feature of the two-tier system is the distribution of company management and supervision functions across two organs.

Management organ

In the Regulation, (Art. 39) the term “management organ” is used for the **board** of the SE and, in Para. 1 of Art. 39, it is stated that the management organ is responsible for managing the SE.

Members of the management organ are appointed and removed by the supervisory organ (Regulation, Art. 39 Para. 2). There is a possibility then provided for in the Regulation for member states to require or permit the statutes to provide that the members of the management organ are appointed and removed by the General Meeting.

Supervisory organ

The supervisory organ **supervises the work of the management organ**. It may not itself exercise the power to manage the SE (Regulation, Art. 40, Para. 1). The members of the supervisory organ are appointed by the General Meeting (Regulation, Art. 40, Para. 2), whereby the Directive provides for any employee participation arrangements determined pursuant to the Directive not to be affected by this.

The **number of members of the supervisory organ** or the rules for determining it are laid down in the statutes (Regulation, Art. 40, Para. 3). A member state may, however, stipulate the number of members of the supervisory organ for SEs registered within its territory or a minimum and/or maximum number.

The other provisions of the regulation applying to the two-tier system are relatively brief:

- The management organ reports to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business.
- In addition to the regular information, the management organ promptly passes the supervisory organ any information on events likely to have an appreciable effect on the SE.
- The supervisory organ can require the management organ to provide information of any kind which it needs to exercise supervision. However, member states may provide that each member of the supervisory organ is also entitled to this facility.
- The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.
- Each member of the supervisory organ is entitled to examine all the information submitted to it. To this one should add that, of course, the form is also dependent on the extent of the information; particularly as outwith meetings, written or electronic information is the only possibility.

The supervisory organ elects a chairman from among its members, but if half of the members of the supervisory organ are appointed by the employees, only a member appointed by the General Meeting of shareholders may be elected chairman.

2. One-tier system

According to Regulation Art. 43, Para. 1, sentence 1, the **administrative organ manages the SE**. What is interesting is that a member state may provide that the managing director or managing directors are responsible for the day-to-day management under the same conditions as for public limited-liability companies that have registered offices within that member state’s territory. Here one can see the differentiation under Anglo-American law between internal and external directors or the traditional French general director (PDG). In the case of such a "division of labour", what is important is the question of which decisions have to affect the entire administrative organ (see under point 3.: Rules common to both systems - Transactions requiring the authorisation of the management organ).

The number of members of the administrative organ or the rules for determining it are, once again, laid down in the SE's statutes. However, a member state may set a minimum and, where necessary, a maximum number of members (Regulation, Art. 43, Para. 2).

When it comes to the **election of the members** of the administrative organ, the same provisions apply as in the case of the supervisory organ under the two-tier system - namely that the appointment is made by the General Meeting. Here too, this applies without prejudice to any employee participation arrangements (Regulation, Art. 43, Para. 3).

The other provisions of the regulation applying to the two-tier system are particularly brief:

- The administrative organ **meets at least once every three months** at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE's business (Regulation, Art. 44, Para. 1).
- Each member of the administrative organ is entitled to examine **all the information** submitted to it (Regulation, Art. 44, Para. 2).
- The administrative organ elects a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the General Meeting of shareholders may be elected chairman (Regulation, Art. 45).

3. Rules common to both systems

Internal rules

With regard to the so-called internal rules, few provisions are laid down in the common rules (see Art. 50):

- in order to be **quorate** at least half of the members must be present or represented
- for **decision-taking** a majority of the members must be present or represented
- where there is no relevant provision in the statutes, the chairman of each organ has a casting vote in the event of a tie. There should be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employee representatives.

Transactions requiring the authorisation of the management organ, Regulation, Art. 48

During the development of the rules for SEs, a variety of different approaches were adopted on this; at one stage a so-called minimum catalogue of transactions requiring authorisation was drawn up. Now, however, Article 48 provides for a mixed approach:

- In the **SE's statutes** a list is made of the categories of transactions requiring authorisation of the management organ by the supervisory organ in the two-tier system, or an express decision by the administrative organ in the one-tier system (Para. 1, sentence 1).
- Member states may, however, provide that in the two-tier system the supervisory organ may itself **make certain categories of transactions subject to authorisation**.
- Finally, member states may **determine the categories of transactions which must at least be indicated in the statutes** of SEs registered within its territory (Regulation, Art. 48, Para. 2).

Duty of confidentiality, liability

The regulation formulates the duty of confidentiality of individual organs as follows: "The members of an SE's organs shall be under duty, even after they have ceased to hold office, **not to divulge** any **information** which they have concerning the SE, the disclosure of which might be **prejudicial to the company's interests**, except where such disclosure is required or permitted under national law provisions applicable to public limited-liability companies or is in the public interest." (Regulation, Article 49).

In the Directive on involvement of employees in the SE, Article 8 and Part 2 of the standard rules provide for special confidentiality regulations with regard to the representative body of the employees in the SE.

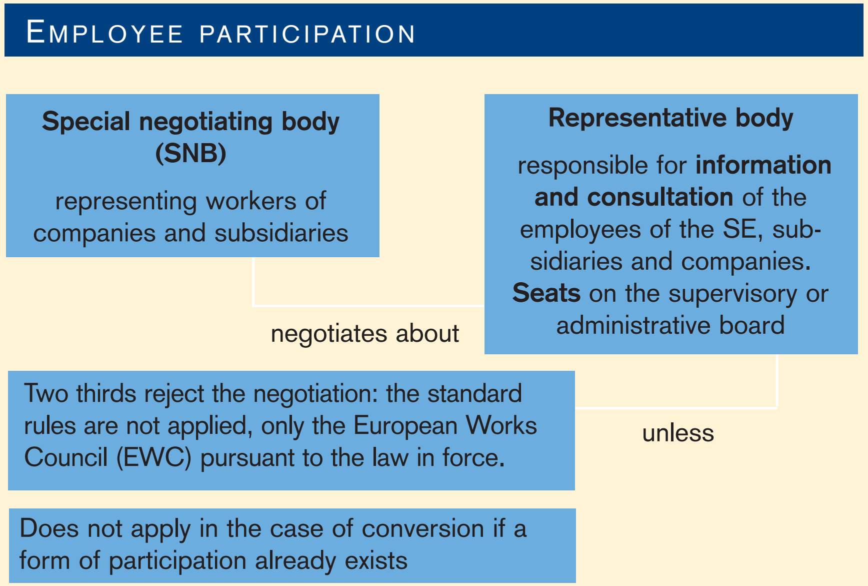
Involvement of employees

The Directive of October 2001 supplementing the Statute for a European Company with regard to the involvement of employees is based on the idea **of free negotiations during the founding phase** of the SE. However the Directive provides, in Article 7 (in various variants related to the various types of formation), for **standard rules on employee involvement**, with individual provisions in the Annex on:

- Part 1 Composition of the representative body of the employees
- Part 2 Standard rules for information and consultation
- Part 3 Standard rules for participation

European Company Statute (SE)

Diagram 3



1. Creation and composition of a special negotiating body

Where **the management or administrative organs** of the participating companies **draw up a plan for the establishment of an SE**, they take the **necessary steps** as soon as possible - including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees - **to start negotiations** with the representatives of the companies' employees on arrangements for the involvement of employees in the SE (Directive, Art. 3, Para. 1).
There is thus no need at this stage for the employees to submit a request - the initiative and responsibility are solely in the hands of the managers intending to set up an SE. Negotiations should start as soon as possible following publication of the planned SE.

The starting point for composition of the body is the principle that **each country** in which the companies involved have employees should have **at least one representative** on the special negotiating body. Box 6 provides the details:

Box 6

Composition of the special negotiating body (Directive, Art. 3, Para. 2a)

- Calculation of the total number of employees in the future SE/SE group
- SEs established other than by way of merger:
  For each 10%, or fraction thereof, there is one seat allocated per member state
- Establishment by way of merger:
  Further additional members from each member state as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company that will cease to exist following registration of the SE
  - an upper limit of 20 per cent of the "regular" members and
  - the composition of the body must not entail double representation of the employees concerned

2. Further points relating to the special negotiating body

The member states determine the methods to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories (Directive, Art. 3, Para. 2b). This section of the Directive contains important provisions related to **membership of trade union representatives in the special negotiating body:**
member states may provide that the body includes representatives of trade unions, **whether or not they are employees of a participating company** or concerned subsidiary or establishment.
Another improvement on the comparable passages in the European Works Council Directive, is the possibility of bringing in experts provided for in Article 3, Para. 5 of the Directive.

- The **special negotiating body** may **decide** to inform the **representatives of appropriate external organisations**, including **trade unionists** of the start of the negotiations.
- For the purpose of the negotiations, the special negotiating body may request **experts** of its choice, for example representatives of appropriate Community-level **trade union organisations**, to assist it with its work (at the request of the special negotiating body, these experts may be present at negotiations in an advisory capacity).
- According to Article 3, Para. 7 of the Directive, any expenses relating to the functioning of the special negotiating body are borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner. Here the member states again have some room to manoeuvre; but the possibility opened up here that the costs covered could be limited to those related to bringing in an expert should be rejected.

3. Negotiations on participation

Diagram 4

EUROPEAN COMPANY STATUTE (SE)

EMPLOYEE PARTICIPATION

DETAILS ON NEGOTIATIONS ON PARTICIPATION (I):

STAGE 1: 2/3 OF THE VOTES
- representing at least 2/3 of the workers
- and workers from at least two states
- decision: not to start or to cancel negotiations

→ ZERO OPTION = ONLY EWC

STAGE 2: AGREEMENT ACCORDING TO ART. 4 DIR/SE

STAGE 3: AT LEAST STANDARD RULES
- if no agreement between the parties
- if no agreement reached before the deadline fixed and the governing bodies of the companies approve the continuation of the procedure.

Negotiations **commence as soon as the special negotiating body has been established** and may continue **for six months** thereafter. The parties may **decide by joint agreement** to extend negotiations up to a **total of one year** from the establishment of the special negotiating body (Directive, Art. 5). This underlines how different the negotiating situation is here (compared with European Works Councils), because - as already mentioned - it is not possible (as in the case of EWCs) for the management to play for time, for without adherence to the negotiating procedures, registration of the SE cannot take place. In Art. 4, Para. 1, the Directive requires the negotiating parties to negotiate in a spirit of co-operation with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.

There are three scenarios:

(1) Only European Works Council

The special negotiating body can, with a vote of **two-thirds** of the members representing at least two-thirds of the employees including the votes of members representing employees employed in at least two member states, decide **not to open or to terminate** negotiations and to rely on the rules on information and consultation of employees in force in the member states where the SE has employees.

- Where such a decision is made, none of the provisions of the Annex apply, and instead (Directive, Art 13, Para. 1) the regulations on European Works Councils apply.
- This option not to open negotiations does not apply to companies formed by conversion or change in legal form if there is a system of participation in the company concerned.

(2) Agreement under Art. 4 Directive

The special negotiating body and the competent organs of the participating companies reach an agreement on arrangements for the involvement of the employees within the SE. Here, initially, there is **autonomy of the parties with regard to the individual details of the agreement**. One **exception**, however, is the case of formation of an SE by means of **transformation**. According to Article 4, Para. 4 of the Directive, the agreement must provide for at least the same level of all elements of employee involvement as those existing within the company to be transformed.

Otherwise Article 4, Para. 2, lists what the agreement must contain:

a) The scope of the agreement

b) The **composition**, the **number** of members and **allocation of seats** on the representative body which will be the discussion partner of the competent organs of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments

c) The functions and the procedure for the **information and consultation** of the representative body

d) The **frequency of meetings** of the representative body

e) The **financial and material resources** to be allocated to the representative body

f) The arrangements for implementing the one or more information and consultation procedures for cases where, during negotiations, the parties decide to establish such procedures instead of a representative body

g) The **substance of arrangements** for participation for cases where the parties decide to establish such arrangements, including (if applicable) the **number of members in the SE's administrative or supervisory body** which the employees will be entitled to elect or appoint and the rights of such members

h) The **date of entry into force** of the agreement and its duration, as well as the procedure for renegotiation of the agreement

According to Article 3, Para. 4 of the Directive, the special negotiating body takes decisions by an absolute majority of its members, provided such a majority also represents an absolute majority of the employees.

If, however the result of the **negotiations would lead to a reduction of participation rights**, the majority required for a decision to approve such an agreement is the votes of **two-thirds** of the members of the special negotiating body, representing at least two-thirds of the employees, provided the votes of members representing employees in at least two member states are included

- in the case of an SE to be established by way of **merger**, if participation covers at least **25 per cent** of the overall number of employees of the participating companies, or
- in the case of an SE to be established by the creation of **a holding company** or by forming a **subsidiary**, if participation covers at least **50 per cent** of the overall number of employees of the participating companies.

Reduction of participation rights, according to the definition of the Directive (Article 3, Para. 4, end), means a **proportion of members of the organs of the SE** which is lower than the highest proportion existing within the participating companies. For a negotiation situation involving for example a German company and employee representatives this would mean that if the Law on Co-determination of 1976 applied to the company in Germany, an agreement could only be concluded below the level of half the seats on the supervisory or administrative board of the SE if this special two-thirds decision was taken in the case of exceeding the employee threshold of 25 or 50 per cent, depending on the particular category of formation. From these remarks on decision-taking it becomes clear how crucial an event the first meeting of the special negotiating body is.

The standard rules in the Annex do not apply to the agreement unless the agreement itself provides otherwise (Directive, Art. 4, Para. 3).

(3) Standard rules

In the introductory remarks of this chapter, we already drew attention to the particular form that employee involvement takes in the present regulations on the SE: on the one hand there is autonomy to conclude agreements, although this is severely restricted in the case of formation by transformation and, on the other hand, is - or can be – supplemented by standard rules in the case of certain constellations listed in detail in Art. 7 of the Directive.

In diagram 4 the final stage was launched with the question "at least standard rules?". We will look at this in greater detail prior to examining the special standard rules for participation (i.e. according to the definitions of terms under Art 2 k of the Directive, the influence of the body representative of the employees and/or of the employees' representatives in the affairs of a company by way of the composition of the supervisory board or administrative organ of the SE).

The initial constellation is described in box 7:

Box 7

Standard rules? (Directive, Art. 7, Para. 1)

a) The parties can agree to this

or

b) The special negotiating body does not decide to terminate negotiations

but

- by the deadline laid down for negotiations to be completed no agreement has been concluded and
- the competent organs of each of the participating companies decide to accept the application of the standard rules to the SE and so to continue with the registration of the SE

> If not all companies agree, formation of the SE has failed

> As further criteria apply to Part 3 of the standard rules (participation), this therefore means standard rules on:

- Part 1 Representative body
- Part 2 Information and consultation

For **Part 3 of the standard rules** - the section referring to participation - there are, as has already been said, **further criteria contained** in Article 7, Para. 2 providing for differentiation **according to the individual forms** in which SEs are set up. Diagram 5 summarises these details:

Diagram 5

European Company Statute (SE)

Employee participation

Details on negotiations on participation (II):

The standard rules only apply:

- in the case of conversion, where participation rights already exist
- in the case of mergers (unless member- states use opt-out) :
  - where a participation right already existed, extending to at least 25% of the workers
  - where a participation right already existed, covering less than 25% of the workers and the special negotiating body makes a decision on this subject
- in the case of the creation of an SE by way of a holding or a subsidiary
  - where a participation right already existed, extending to at least 50% of the workers
  - where a participation right already existed, covering less than 50% of the workers and the special negotiating body makes a decision on this subject

According to Article 12, Para. 3 of the Regulation, **one requirement for registration** of an SE is that an **agreement on employee involvement** should have been concluded **or** that **none of the participating companies** have been governed by **participation rules** prior to the registration of the SE. In other words, if regulations on participation apply to one of their participating companies, then in the case of a merger, even if a member state has made use of the opt-out, an agreement is necessary unless all the employees involved did not previously have participation rights (see also Part 3 of standard rules b, Para.2).

In the case of establishment of an SE by setting up a holding company or a subsidiary, and the possible **coincidence of different forms of participation**, a provision is made at the end of Article 7, Para. 2 c for the special negotiating body to decide which is to be introduced into the SE.

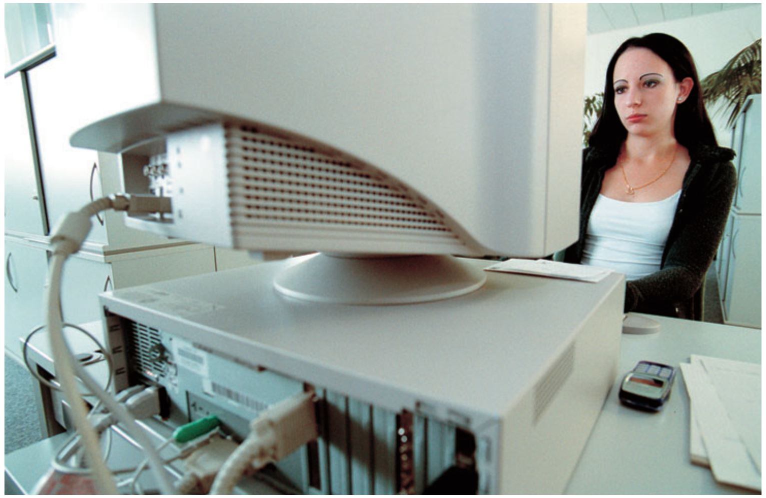
This situation should not be confused with Part III b of the standard rules for participation, according to which employees have the right to elect a number of members of the administration or supervisory organ. There the **number of members (seats) allocated is based on the highest proportion in force in the participating companies** before registration of the SE. In other words, in the case of a German company with more than 2,000 employees, 50% of seats on the supervisory board are for employee representatives, and in the case of an Austrian company, one-third. In this case the maximum relevant share would be 50%.

In the case of forms of participation under the standard rules for establishment of a holding company or a subsidiary, there is a **difference between election or appointment** of members of the organ or recommendation or rejection of their appointment. Here, for example, the special negotiating body would have to decide between the system of co-opting to the supervisory board at present applied in the Netherlands, on the one hand, and the German system of election to the supervisory board by the employees/delegates on the other.

4. Confidentiality

The Directive lays down that member states should ensure that members of the special negotiating body or the representative body, and any experts who assist them, should not be authorised to reveal to third parties any **information which has been given to them in confidence**.

By contrast, the **duty of confidentiality of members of the organs of the SE can be found in Article 49** of the Regulation (disclosure of information which might be prejudicial to the company's interests). It is feasible that practical problems, or even conflicts, could arise here.



5. Relationship of this directive to other regulations / Miscellaneous

Misuse of procedures

Here Article 11 of the Directive requires member states to take appropriate measures to prevent the misuse of an SE for the purpose of depriving employees of rights to employee involvement or withholding such rights. And once again, Point 18 of the Recitals in the Directive should be mentioned: in the case of structural changes in an existing SE and for the companies affected by structural change processes, there must be a right to negotiations. Otherwise the sequence of processes involved in establishment of an SE could result in employees being denied participation rights.

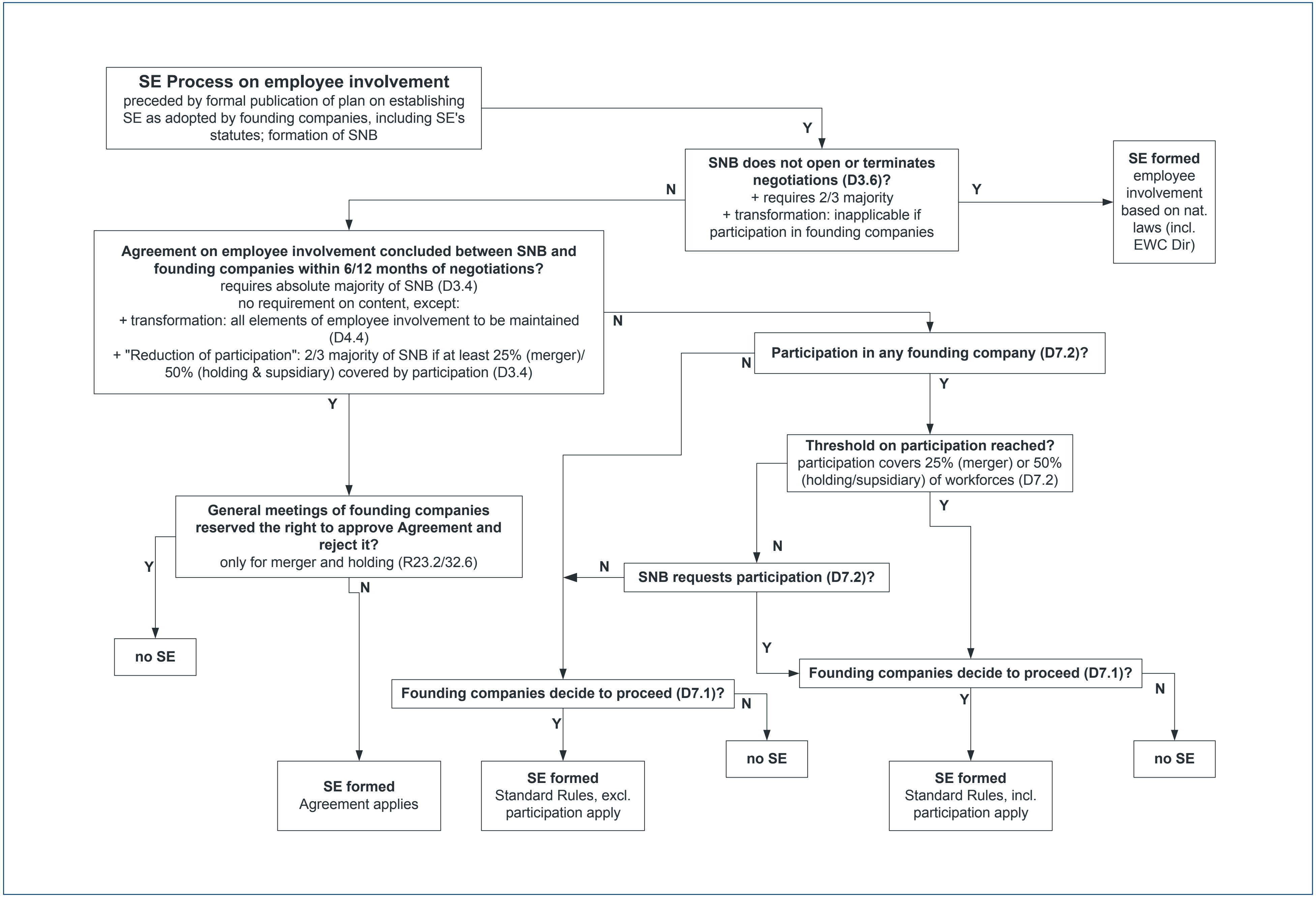
Protection of employees

Article 10 of the Directive provides for members of the special negotiating body, members of the representative body, any employee representatives exercising functions under the information and consultation procedure and any employee representatives in the supervisory or administrative organ of an SE who are employees of the SE, to enjoy the same protection and guarantees provided for employees representatives by the national legislation and/or practice in force in their country of employment. This applies in particular to attendance at meetings of the special negotiating body or representative body, any other meeting of the administrative or supervisory organ and to the payment of wages for members employed by a participating company during a period of absence necessary for the performance of their duties.

Link between the Directive and other provisions

Finally, some comments should be made on Article 13, which deals with the link between the Directive on employee involvement and other European or national forms of participation.
Differentiation has to be made between:

- **SEs or subsidiaries of an SE** that are Community-scale undertakings or controlling undertakings of a Community-scale group of undertakings within the meaning of the 1994 European Works Council Directive (or the 1997 Directive extending this to the United Kingdom) **are not subject to the provisions of these directives** and the provisions transposing them into national legislation. To put it simply, the SE is a separate construction for information, consultation and participation. If, however the special negotiating body decides in accordance with Article 3, Para 6 not to open negotiations, then the European Works Council Directives and the provisions transposing them into national legislation apply. In such a case, in other words, a lack of negotiating skills would result in the more "watered-down" rights based on the European Works Council Directives applying to companies or corporate groups operating on a Community-wide basis.
- **Provisions on the participation of employees in company bodies provided for by national legislation and/or practice do not apply to an SE**. The provisions in the Regulation, the Directive and the provisions transposing these into national legislation have precedence over national regulations on participation in the organs of an undertaking.
- The Directive does **not affect the existing rights to involvement of employees provided for by national legislation and/or practice** in the member states as enjoyed by employees of the SE and its subsidiaries and establishments, with the exception of participation in the organs of the SE (Directive, Art. 13, Para. 3a). For a German works council in a German company e.g., the company constitution still applies (the particular problem of mergers will be dealt with below).
- Provisions on **participation in the bodies** laid down by national legislation and/or practice applicable to the **subsidiaries of the SE are not affected by the Directive**. If, for example, an SE was set up as a holding in the Netherlands, employee involvement in the supervisory board of a subsidiary in Germany would not be affected, so long as employee numbers were in accordance with the relevant legislation.
- The question of the **termination of separate legal entities** in the national context in the **case of mergers** is a particular problem. According to the German Company Constitution Act e.g., the company works council/economic committee requires the company to include a national legal entity. In the case of a merger, if this company became part of another company, this might well no longer be the case. That is why Article 13 of the Directive, in order to **preserve the relevant rights**, provides for member states to take the necessary measures **to guarantee** that the **structures of employee representation** in participating companies are maintained after registration of the SE. Thus the continued existence of the company works council/economic committee can be achieved by the relevant national legislation. What is likely to be crucial, however, is that there should also be a guarantee that these employee representatives have made available to them a negotiating partner from the management of the SE or at least an authorised competent representative with decision-making powers.


SE Process on employee involvement
preceded by formal publication of plan on establishing SE as adopted by founding companies, including SE's statutes; formation of SNB
Y
SNB does not open or terminates negotiations (D3.6)?
+ requires 2/3 majority
+ transformation: inapplicable if participation in founding companies
Y
SE formed
employee involvement based on nat. laws (incl. EWC Dir)
N
Agreement on employee involvement concluded between SNB and founding companies within 6/12 months of negotiations?
requires absolute majority of SNB (D3.4)
no requirement on content, except:
+ transformation: all elements of employee involvement to be maintained (D4.4)
+ "Reduction of participation": 2/3 majority of SNB if at least 25% (merger)/ 50% (holding & supsidiary) covered by participation (D3.4)
N
Participation in any founding company (D7.2)?
N
Y
Y
Threshold on participation reached?
participation covers 25% (merger) or 50% (holding/supsidiary) of workforces (D7.2)
Y
N
General meetings of founding companies reserved the right to approve Agreement and reject it?
only for merger and holding (R23.2/32.6)
Y
N
N
SNB requests participation (D7.2)?
Y
no SE
Founding companies decide to proceed (D7.1)?
N
Y
Founding companies decide to proceed (D7.1)?
N
Y
no SE
no SE
SE formed
Agreement applies
SE formed
Standard Rules, excl. participation apply
SE formed
Standard Rules, incl. participation apply

MORE CROSS-BORDER FLEXIBILITY FOR COMPANIES - THE SE AS THE FLAGSHIP OF EUROPEAN COMPANY LAW

MORE CROSS-BORDER FLEXIBILITY FOR COMPANIES - THE SE AS THE FLAGSHIP OF EUROPEAN COMPANY LAW

I. The SE as a European legal form of business organisation

On 8 October 2004 the Regulation establishing the European Company Statute (ECS) will enter into force in all 28 member states of the European Union (EU) and the European Economic Area (EEA). In addition, the Directive (ECD) on the involvement of employees in the governing bodies of European Companies (Societas Europaea, SE) must be transposed into member states' national law by that time. Moreover, as the ECS is rather a legal framework than a comprehensive European statute, all member states must integrate the ECS in their national legal system, although it is by its very nature directly applicable throughout the EU and the EEA, respectively. Further on, the national legislators have to fulfil the various obligations as well as to carry out the diverse authorisations contained in the ECS[1].

In general, the European Company (SE) is to be regarded, like every other form of business organisation, as a legal basis and institutional framework of entrepreneurial activity, determining both legal relationships with the business environment and stakeholders (shareholders, bondholders and creditors, directors and managers, employees and others) and the enterprise's internal affairs. However, as the SE is a corporate body its core characteristics are merely the same as those of public limited-liability companies based on national law and with their registered office in the same member state; this is a key point, as the attempt to comprehensively harmonise or even unify the core characteristics of the SE throughout the Community, regardless of the location of its registered office, prevented the adoption of the ECS for more than 30 years and ultimately failed. However, an SE may be formed in only four ways: (i) by merger; by formation of (ii) a holding or (iii) a joint subsidiary; or (iv) by transformation (conversion); and solely by enterprises with a specific form of business organisation. It is governed either by a single administrative organ (board or one-tier system) or by a management organ supervised by a separate supervisory body (dual or two-tier system), as laid down in the SE's statutes. The name of such an enterprise must be preceded or followed by the abbreviation "SE".

In sum, the crucial difference between an SE and a national corporation with its registered office in the same member state is not a matter of legal personality, limited liability, centralised management or the free transferability of shares, all of which distinguish a corporation from other forms of business organisation and which may differ in detail between different member states. What distinguish the SE, under the ECS, are its various cross-border aspects, i. e. the opportunity it provides for enterprises to structure, reorganise and combine their pan-European operations, to transfer their registered office across borders, to choose an appropriate system of corporate governance, to determine the involvement of employees from different member states by way of negotiation and to apply a single legal and organisational structure throughout the EU and the EEA without prohibitive legal obstacles.

However, the success of the European Company will depend primarily on the extent to which enterprises can derive specific benefits from application of the ECS as compared to public limited-liability companies subject to the company

1 For a comprehensive analysis of all legal, economic and fiscal aspects of the European Company see Manuel R. Theisen and Martin Wenz (eds), Die Europäische Aktiengesellschaft – Recht, Steuern und Betriebswirtschaft der Societas Europaea (SE) (Stuttgart: Schäffer-Poeschel, 2002). See also Jacques-Louis Colombani and Marc Favero, Societas Europaea – La Société européenne (Paris: Joly éditions, 2002).

law provisions of different member states[2]. This is especially the case for European enterprises, but it may also apply to companies and groups from third countries operating on a Community scale. In assessing the possible advantages of the SE from a company perspective, three questions have to be considered: First, do enterprises need a supranational European legal form of business organisation, and second, if so, will they set-up a European Company according to the ECS? Finally, what will be the economic and legal benefits of the supranational legal form of the SE in cross-border situations? In what follows, we shall examine the third aspect in detail.

II. Application and use of the SE

When assessing the economic and legal benefits of the SE, as well as whether the SE will be a successful vehicle for doing business in Europe[3], one must explore possible applications and uses of the SE within the framework of a number of different cases, paying particular attention to administrative, transaction and legal costs, as compared to alternative legal and organisational structures.
For this purpose, the different cases may be divided into three groups:

Cases

(i) Combination of business enterprises
- Merger SE
- Acquisition SE
- Integrated European Group SE
- Joint Venture SE

(ii) Reorganisation and reengineering of business enterprises
- Reorganisation SE
    - European Holding SE
    - European Single Entity SE
- European Group SE
- Reengineering SE

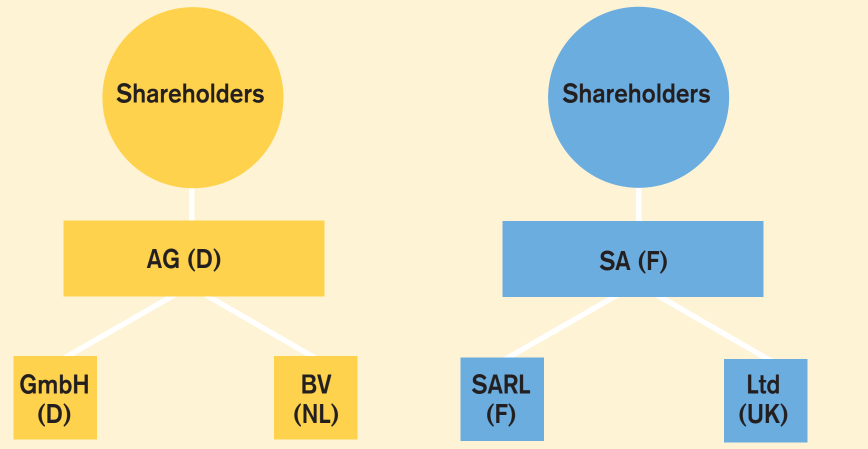
(iii) Cross-border transfer of registered office and head office
- Cross-border SE

III. Combination of business enterprises

1. Merger and Acquisition SE

A Merger SE is formed when two or more public limited-liability companies from different member states of the EU or the EEA decide to combine their operations and shareholdings across borders and assume the legal form of an SE by means of a legal merger; this represents a full merger of the companies involved in contrast to restructuring by means of a financial merger (takeover structure) with an exchange of shares. (For the situation of the two groups before the merger see Figure 1; for the situation after the transformation into a Merger SE see Figure 2.) The amalgamation of the German Hoechst AG and the French Rhône-Poulenc SA to form the German–French Aventis SA is an example of this kind of cross-border merger (of equals).

Figure 1: Initial situation before Merger

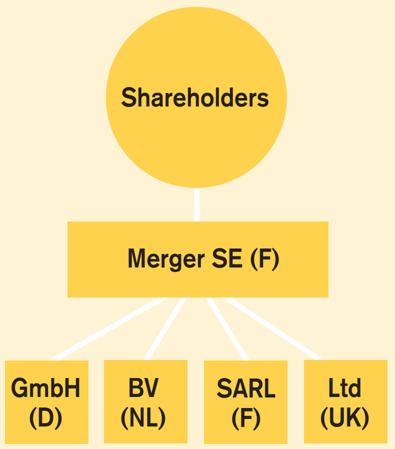


2 The various tax issues relating to the European Company are no less important and are examined by eminent tax experts from all over Europe in a special issue of European Taxation, guest-edited by Martin Wenz, "Societas Europaea: Flagship for Company Law – Catalyst for EC Tax Law?", European Taxation 44 (2004), pp. 1–45.

3 Regarding the different opportunities to apply and use an SE, see in detail also Martin Wenz, "Einsatzmöglichkeiten einer Europäischen Aktiengesellschaft in der Unternehmenspraxis aus betriebswirtschaftlicher Sicht", Die Aktiengesellschaft 48 (2003), pp. 185–96.

When different national enterprises or groups merge into an SE, a number of legal and economic benefits accrue as compared to a financial merger that is based always on a takeover structure. In this respect, the legal and organisational structure of the entire European group may be unified and simplified because the parent companies merging into the SE are treated symmetrically and – at least one of them – cease to exist; also, the shareholders of the merging parent companies are entirely consolidated. Shares in subsidiaries may therefore be transferred within the entire group without limitations due to national company law because after the merger minority shareholders of the former parent companies with diverging interests no longer exist. Reorganisation may therefore be exercised more efficiently and flexibly. In addition, the legal, organisational and administrative costs of intermediate national and especially non-operational holding companies (management, supervision, administration, reporting, controlling, shareholders' meeting, accounting, auditing and publication) are avoided because one or both of the former parent companies will cease to exist, depending on whether the merger takes place by acquisition or by formation of a new company.

Figure 2: Merger SE

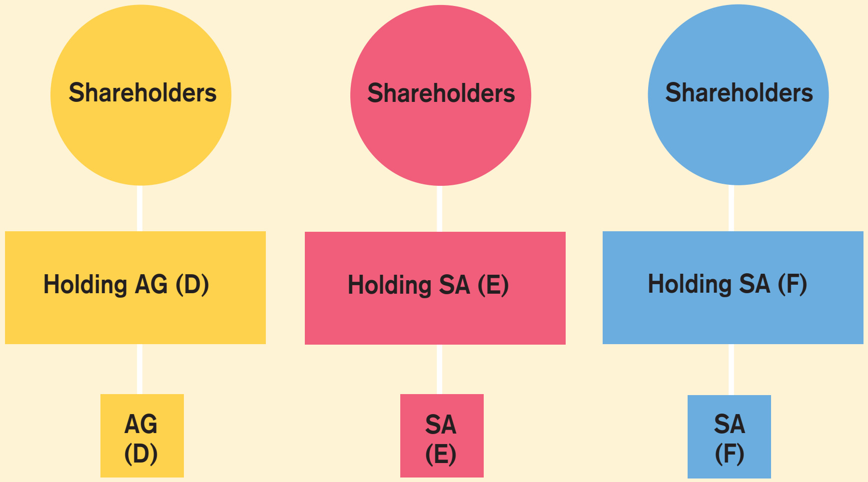


Moreover, the Merger SE may choose between a single administrative organ (board or one-tier system) and a management organ supervised by a separate supervisory organ (dual or two-tier system). The SE is in principle free to choose a system of corporate governance that corresponds with market conditions and individual needs, irrespective of the particular system determined by the company law provisions of the member state in which the SE is registered. Employee involvement will be negotiated between the management of the companies merging into the SE and the employees' representatives. Otherwise, especially with regard to employee participation, the regulations laid down in the ECD (obligatory standard rules) will apply, taking into consideration whether employee participation already exists in the merging companies (the "before and after" principle) and also the number of employees concerned compared to the total number of employees in all participating companies. In both cases, employees from the different member states involved will take equally part in the election of their representatives and – as the case may be – will be involved and represented proportionally in the representative body in matters of information and consultation and in the bodies governing the Merger SE in relation to participation.
Furthermore, the Merger SE possesses a European corporate identity, is able to develop a European corporate culture and owns a European corporate goodwill. Therefore, psychological barriers and national egoism as a result of the combination of companies or groups from different member states may be overcome. In addition, the Merger SE is able to act for the entire group with a European image on a Community scale.
In the case of an **Acquisition SE** a company or group from one EU or EEA member state decides to acquire a company or group from another member state with a subsequent up- or downstream merger into an SE by acquisition or by formation of a new company. This is to be regarded as post-merger integration whereby more or less the same legal and economic benefits may be realised as in the case of a Merger SE. Already existing examples of this kind of cross-border acquisition include the takeovers of the German Mannesmann AG by the British Vodafone plc and of the Austrian Bank Austria AG by the German HypoVereinsbank AG.

2. Integrated European Group SE

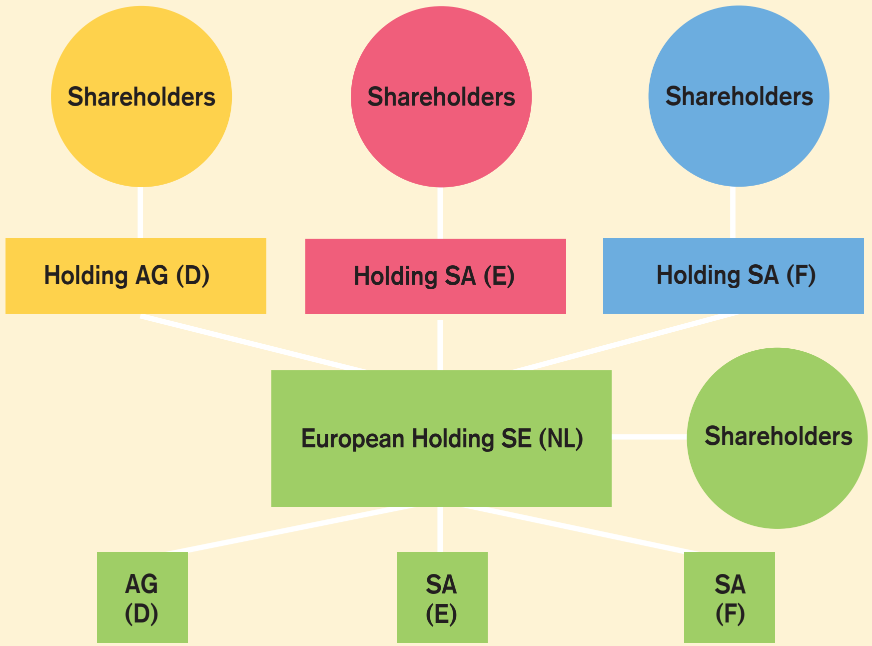
In the case of an **Integrated European Group SE** several European groups from different EU or EEA member states seek to cooperate on a long-term basis and therefore combine specific operations carried out in separate subsidiaries across borders so that the activities are not only contractually combined, but also fully integrated in a single group that operates separately from the participating groups. The different European groups may decide to form an Integrated European Group SE with a common intermediate **European Holding SE** instead of a holding company governed by the national company law of a member state because the Integrated European Group SE is a legal form of business organisation that is in principle independent of both the legal system of the member state in which the SE is registered and the legal systems of the member states governing the participating groups. (For the situation of the three groups before they establish an Integrated European Group SE see Figure 3; for the situation afterwards see Figure 4.) Already existing examples of a similar kind of formation include the European Aeronautic and Defence and Space Company NV (EADS) created by the French Aerospatiale Matra SA, the German DaimlerChrysler Aerospace AG and the Spanish Construcciones Aeronaúticas SA.

Figure 3: National operating Companies



By forming an Integrated European Group SE by groups from different member states it is possible to establish a rather autonomous and integrated group that operates separately from the participating groups instead of a mere contractual cooperation. Additionally, such an SE may opt for a system of corporate governance in the European Holding SE that is similar to the respective systems of the participating groups and meets the economic requirements of the SE, irrespective of the system that is determined by the national company law provisions of the member state in which the SE is registered. It is therefore possible, for example, to adopt a two-tier system with a management organ independent of the management organs of the participating groups and with a separate supervisory organ in order to monitor the management organ, but not to manage the European Holding SE. In this way national egoism may be prevented and all participating groups are able to expand and unify their existing systems of corporate governance also with regard to the Integrated European Group SE. Employee involvement is negotiated between the management of the subsidiaries that participate in the formation of the European Holding SE and the employees' representatives. Otherwise, especially with regard to employee participation, the obligatory standard rules laid down in the ECD will apply, taking account of whether employee participation already exists in some or all participating subsidiaries and also the number of employees concerned compared to the total number of employees in all participating subsidiaries. In both cases, employees from the different member states involved will take equally part in the election of their representatives and – as the case may be – will be involved and represented proportionally in the representative body in matters of information and consultation and in the bodies governing the European Holding SE in relation to participation.

Figure 4: Integrated European Group SE

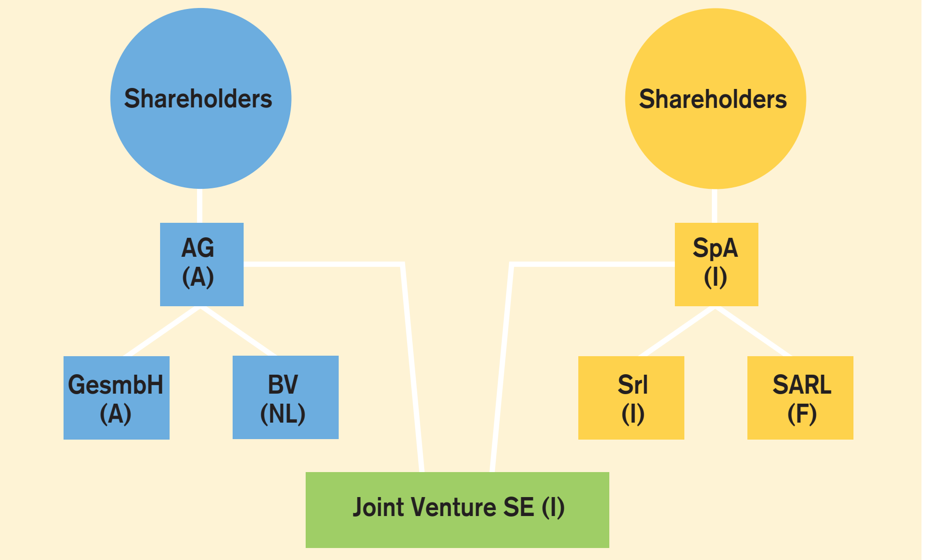


Moreover, as the SE is a public limited-liability company it is possible for the participating groups to quote and sell a certain percentage of their shares in the SE in a stock market; it is also possible for the European Holding SE to issue new shares in order to finance new investments. Furthermore, the European Holding SE possesses a European corporate identity, is able to develop a European corporate culture and possesses a European corporate goodwill. Thus, psychological barriers and national egoism as a result of the cross-border combination of certain specific operations and subsidiaries may be overcome. Furthermore, the European Holding SE is able to act for the Integrated European Group with a European image on a Community scale.

3. Joint Venture SE

A **Joint Venture SE** may be formed when two or more companies or groups from different EU or EEA member states want to cooperate on a long-term basis and hence combine specific operations across borders. They may decide to form a Joint Venture SE instead of a Joint Venture company based on the national company law of a particular member state because the SE is a European form of business organisation that is in principle independent from both the legal system of the member state in which it is registered and the legal systems governing the participating companies. (For the situation after the formation of a Joint Venture SE see Figure 5.) Brenner Basis Tunnel, currently organised as a European Economic Interest Grouping (EEIG), could be regarded as an example for a Joint Venture SE formed across borders.

Figure 5: European Joint Venture SE



The formation of a Joint Venture SE by two companies from different member states makes it possible to combine specific operations in a separate entity across borders and to choose a system of corporate governance that is both similar to those of the participating companies and corresponds to the economic needs, irrespective of the particular system determined by the national company law provisions of the member state in which the SE is registered. For example, it is possible to opt for a dual system with a management organ that is independent from the management organs of the participating companies, with a separate supervisory organ in order to supervise its work but not to manage the Joint Venture SE. In this way, national egoism may be prevented and both participating companies are able to extend and unify their systems of corporate governance in relation to the SE. Employee involvement will be negotiated between the management of the participating companies and the employees' representatives. Otherwise, especially with regard to employee participation, the obligatory ECD standard rules will apply, taking into consideration the existence of employee participation in the participating companies and the number of employees concerned compared to the total number of employees in all participating companies.

Moreover, as the SE is a public limited-liability company it is possible for the participating companies to quote and sell a percentage of their shares in the SE in a stock market; it is also possible for the SE to issue new shares in order to finance new investments. Furthermore, the Joint Venture SE possesses a European corporate identity, is able to develop a European corporate culture and owns a European corporate goodwill. Thus, psychological barriers and national egoism that follow from the combination of specific operations across borders may be overcome; furthermore, the Joint Venture SE will be able to act with a European image on a Community scale.

IV. Reorganisation and reengineering of business enterprises

1. Reorganisation SE

A **Reorganisation SE** may be formed by groups with parent companies from third states outside the EU or the EEA (that is, foreign groups), operating throughout Europe with numerous subsidiaries governed by different national company laws, that want to reorganise their European operations in order to better coordinate, combine and represent them on a Community scale, and also to reduce legal, administrative and organisational costs. Such foreign groups may decide to form an intermediate **European Holding SE** by transferring their shares in the subsidiary companies, or a **European Single Entity SE** by means of a cross-border merger of the subsidiary companies into an SE. (For the initial situation of the European operations of a foreign group with a parent company from Japan see Figure 6; for the situation after the formation of a European Holding SE or a European Single Entity SE see Figures 7 and 8.) Examples of this kind are provided by the reorganisation of several Japanese groups operating in Europe with various subsidiaries.

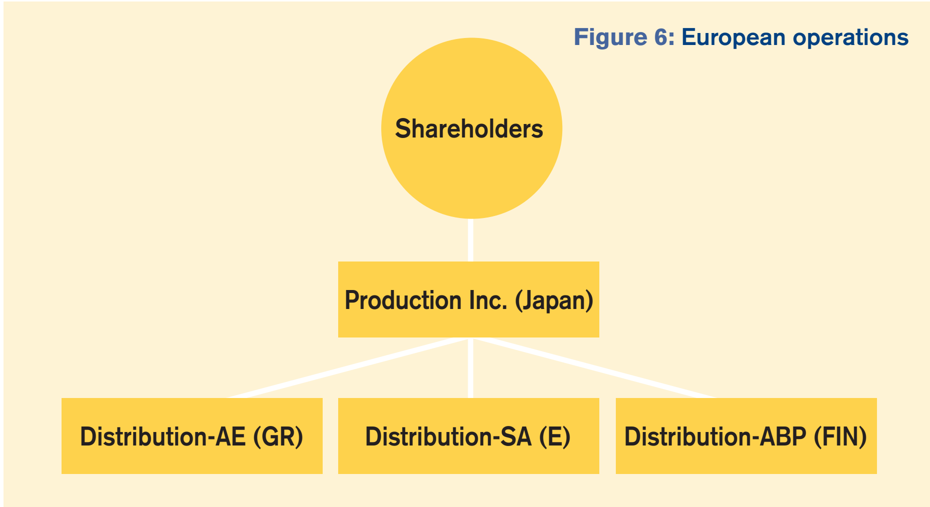


Figure 6: European operations

Forming a Reorganisation SE by means of an intermediate European Holding SE or a unified European Single Entity SE makes it possible to better coordinate, combine and – on a Community level – represent European activities in the different member states. The legal form of a European Company (SE) possesses a European corporate goodwill in contrast to rather “provincial” companies governed by the national company laws of the different member states. The management of a European Holding SE or European Single Entity SE is one at Community level whereby its status is comparable to that of an American or Japanese board. Moreover, a Reorganisation SE has a European corporate identity and fosters the development of a European corporate culture, overcoming psychological barriers and enhancing market acceptance.

Figure 7: Reorganisation of European operations: European Holding SE

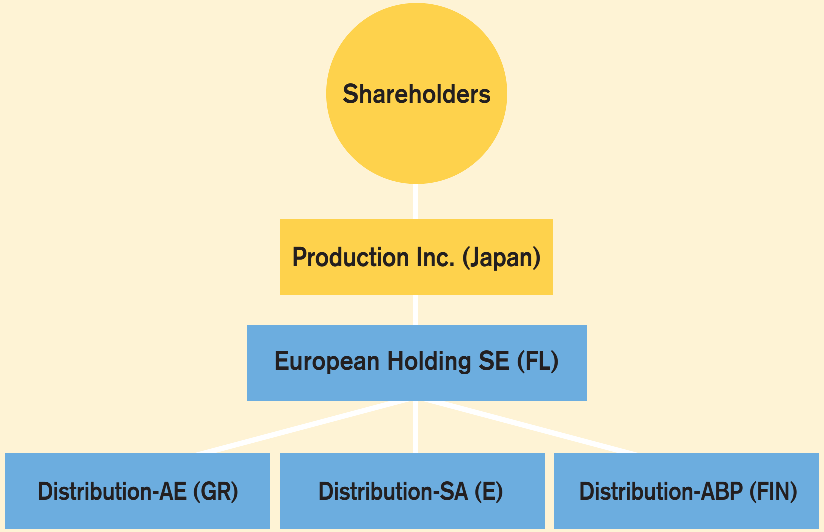
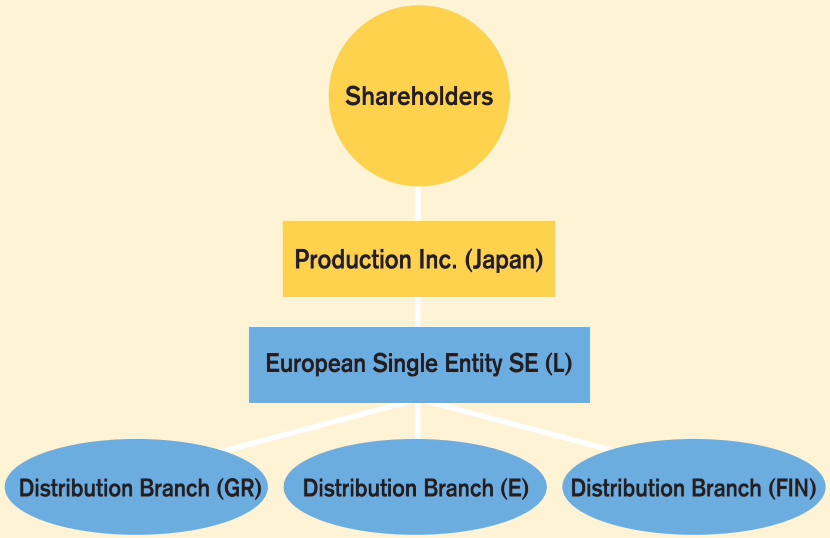


Figure 8: Reorganisation of European operations: European Single Entity SE



Furthermore, it is possible for a Reorganisation SE, formed by merger or by setting up a holding, to choose a system of corporate governance – for example, the board system – that is similar to that of the Japanese parent company, irrespective of the system that is determined by the national company law provisions of the member state in which the SE is registered. In this way the systems of corporate governance may be unified globally throughout the Japanese group. Employee involvement will be negotiated between the management of the subsidiaries participating in the formation of the Reorganisation SE and the employees' representatives. Otherwise, especially with regard to employee participation, the obligatory ECD standard rules will apply, taking account of whether employee participation already exists in the subsidiaries merging into the European Single Entity SE or forming the European Holding SE; the number of employees concerned compared to the total number of employees in all participating subsidiaries is also taken into consideration. In both cases, employees from the different member states involved will take equally part in the election of their representatives and – as the case may be – will be involved and represented proportionally in the representative body in matters of information and consultation and in the bodies governing the European Holding SE or the European Single Entity SE in relation to participation.

2. European Group SE

A **European Group SE** may be formed by European groups that want to unify and simplify their legal and organisational structure and corporate governance system. To this end, the parent and the various subsidiaries located in different EU or EEA member states, insofar as they are organised as a public limited-liability company governed by different national company laws, may decide to form a European Group SE by converting all the companies in question into an SE. Further subsidiaries may be formed directly as SEs. (For the situation of such companies before conversion see Figure 9; for the situation after conversion and the formation of further subsidiaries as an SE see Figure 10.) Possible candidates for this kind of SE might be e.g. the Scandinavian Nordea Group or the German Volkswagen Group.

Figure 9: Initial situation before conversion

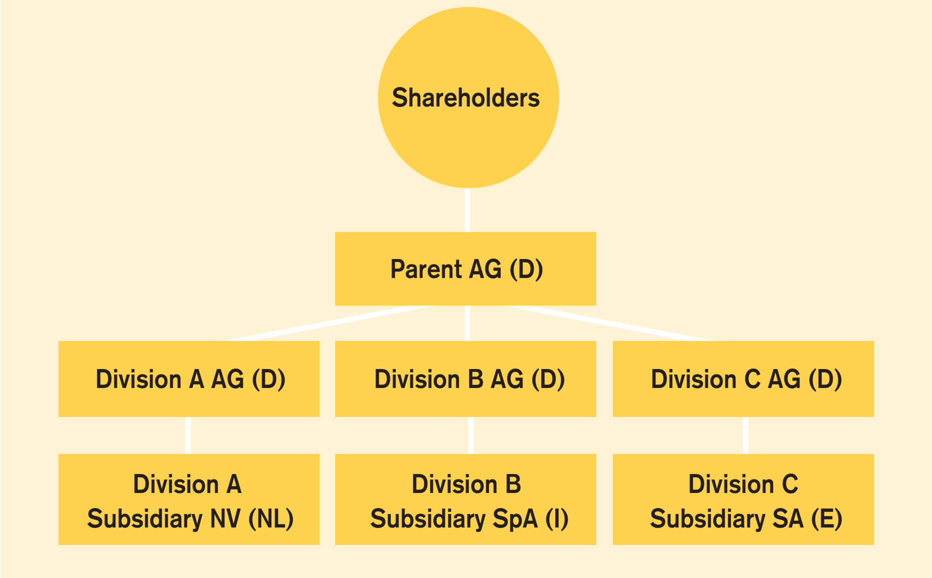
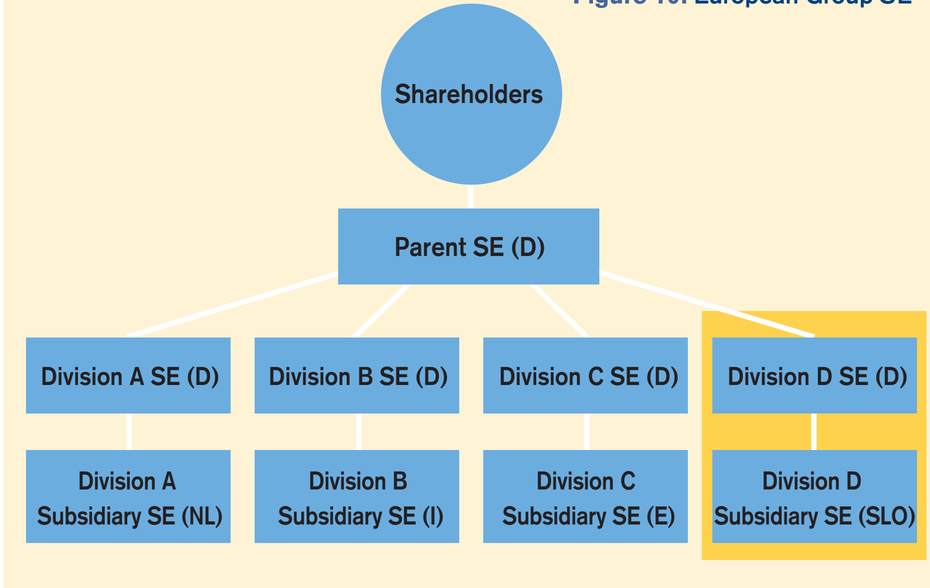


Figure 10: European Group SE



The formation of a European Group SE – by converting the parent and, as the case may be, also certain subsidiaries into an SE, or by forming further subsidiaries directly in the form of an SE – enables the participating companies to set up as a European business organisation governed by a rudimentary single and European set of rules and therefore with the same core characteristics. In this way the legal structure of the whole group may be unified and simplified and legal, administrative and organisational costs may be reduced. In addition, the different SEs are flexible in that they may choose not only a system of corporate governance appropriate to capital market conditions and individual needs, but also – for the entire group – between a single administrative organ (board or one-tier system) and a management organ supervised by a separate supervisory organ (dual or two-tier system). A unified system of corporate governance may be chosen which applies throughout the whole group.

Employee involvement will be negotiated individually for every single SE between the management of the respective company and the employees' representatives. However, in this case the different agreements shall provide for at least the same level of employee involvement with regard to information, consultation and participation as in the companies being transformed into an SE. In the absence of a negotiated agreement, the obligatory ECD standard rules will apply, taking into account the current extent of employee involvement in the company being transformed. In both cases, employees from the different member states involved will take equally part in the election of their representatives and – as the case may be – will be involved and represented proportionally in the representative body in matters of information and consultation and in the bodies governing each SE of the European Group SE in relation to participation.
Furthermore, the companies under transformation, as a result of becoming an SE, possess a European corporate identity, will develop a European corporate culture and own a European corporate goodwill. In this way the European Group SE will provide the different companies with a European image on a Community scale.

3. Reengineering SE

A **Reengineering SE** may be formed by groups operating throughout Europe, or even globally, with numerous subsidiaries and whose parent company is governed by the national company law of an EU or EEA member state in order to adapt its corporate governance system according to market conditions and individual needs. Therefore, the parent company – organised as a public limited-liability company governed by the national company law of a particular member state – may decide to form a Reengineering SE by conversion into an SE. An example of this is the contentious modification of the corporate governance structure of the German Deutsche Bank AG.

A Reengineering SE formed by converting an existing national public limited-liability company may choose between a single administrative organ (board or one-tier system) and a management organ supervised by a separate supervisory organ (dual or two-tier system), irrespective of the system and principles of corporate governance laid down by the national company law provisions of the member state in which the registered office of the SE is located. Thus, a public limited-liability company that is transformed into an SE has the flexibility to choose a corporate governance system in accordance with capital market conditions and individual needs, and may globally unify the corporate governance principles throughout the entire group.

Moreover, employees' involvement will be negotiated between the management of the company being converted into an SE and the employees' representatives. However, in this case the agreement shall provide for at least the same level of employee involvement with regard to information, consultation and participation as already exists. In the absence of a negotiated agreement, the obligatory ECD standard rules shall apply, taking into consideration only whether and to what extent employee involvement already exists in the company being transformed into an SE. In both cases, employees from the different member states involved will take equally part in the election of their representatives and – as the case may be – will be involved and represented proportionally in the representative body in matters of information and consultation and in the bodies governing the Reengineering SE in relation to participation.

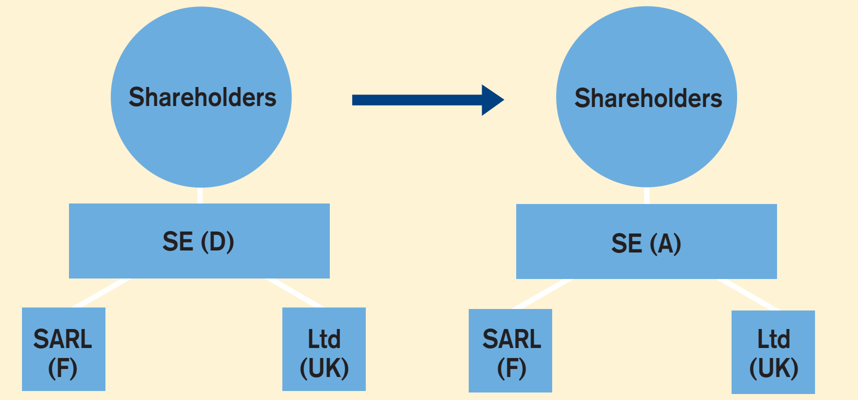
The company under transformation will possess a European corporate identity, develop a European corporate culture and own a European corporate goodwill. In this way the Reengineering SE will provide the whole group with a European image on a Community scale.

V. Cross-border transfer of head office and registered office

According to the ECS, a **Cross-Border SE** may transfer its registered office to another EU or EEA member state without losing legal personality. Such a transfer will not result in the winding up of the respective SE in the state of emigration (outward transfer of seat) nor in the creation of a new legal person in the state of immigration (inward transfer of seat). This is because the SE is a legal form that is based on Community law, regardless of whether matters not – or only partly – regulated by the ECS are governed by the national company law of the member state in which the SE is registered and by provisions of the SE's statutes under the member state's company law on public limited-liability companies. (For the situation before and after the transfer of the registered office and head office of an SE see Figure 11.) An example of such a transfer is the much-commented-on announcement by the German Infineon AG that it might transfer its head office outside Germany.

However, an SE may not transfer its registered office and its head office to different member states: both must be located within the same member state. In such cases the SE must either re-establish its head office in the member state in which its registered office is situated or transfer its registered office to the member state in which its head office shall henceforth be located. Should an SE fail to comply with this requirement, the member state in which the SE's registered office is situated must take measures to liquidate the respective SE.

Figure 11: Cross Border SE



By transferring its registered office subsequent to its formation – for example, by converting an existing public limited-liability company into an SE – a Cross-Border SE does not lose its legal personality: all EU and EEA member states recognise the legal existence of the SE wherever its registered office is located as long as it is within the Community and in the same member state as its head office.
It is the purpose of the ECS – together with the different national acts of the member states to integrate the ECS into their national legal system and to fulfil the obligations and authorisations of the ECS in the case of a cross-border transfer of an SE's registered office – to maintain the SE's legal personality, to coordinate the change in those provisions of the national company laws of the respective member states in which the SE's head office was initially and will be henceforth located and proportionately to protect the interests of minority shareholders who oppose the transfer, of creditors and holders of other rights. (For the legal procedure governing the transfer of an SE's registered office see Figure 12.)

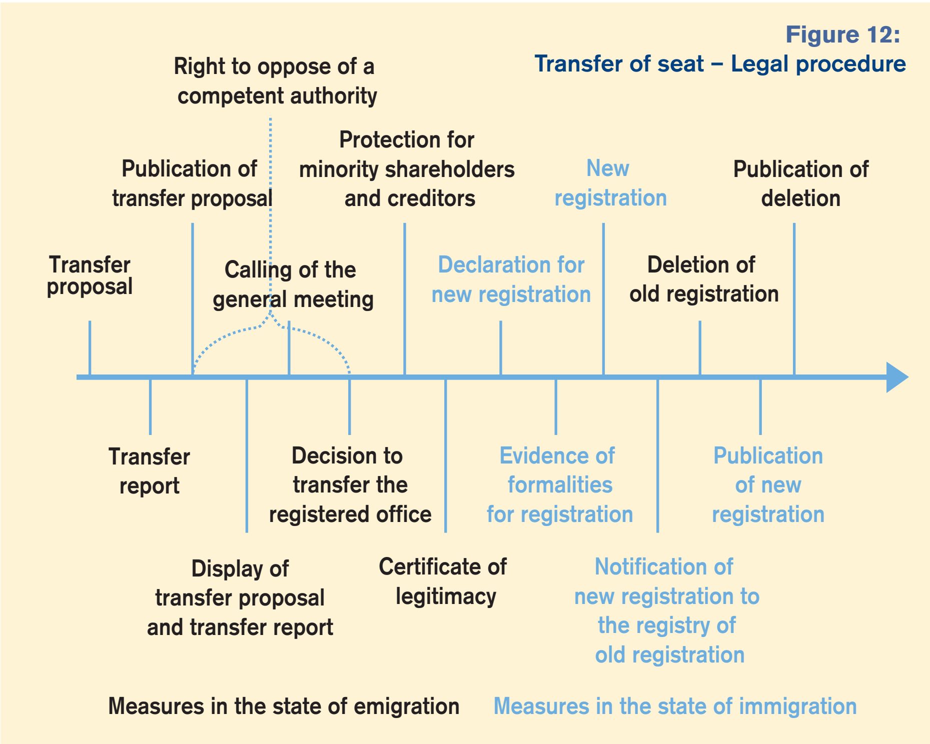


Figure 12: Transfer of seat – Legal procedure

Moreover, the Cross-Border SE may choose between a single administrative organ (board or one-tier system) and a management organ supervised by a separate supervisory organ (dual or two-tier system), irrespective of the principles and system of corporate governance established by the company law provisions of the member state in which the registered office and the head office are located. Thus, a public limited-liability company that is transformed into an SE is not only able to choose a system of corporate governance in keeping with capital market conditions and individual needs, but also to retain the chosen system regardless of the national company law of the member state in which its registered office and head office are located. Furthermore, the involvement of employees according to an agreement or – in the absence of such an agreement – according to the obligatory ECD standard rules, shall not be affected by a transfer of the registered office across borders.

VI. Conclusion

By adopting the ECS, European enterprises (such as Aventis, Vodafone, Hy-poVereinsbank, EADS, Nordea, Volkswagen and others) will be in a position to structure, reorganise and combine their pan-European operations on a Community scale, to transfer their corporate seat across borders without loosing legal personality and to adapt their legal and organisational structure through-out the EU and the EEA, without encountering prohibitive legal obstacles, based on a rudimentary single and European set of rules which pay particular attention to cross-border situations. In addition, these companies and groups are able to choose a suitable system of corporate governance, and therefore will possess a unified management and reporting system, irrespective of company law provisions in the member state in which the SE is registered. For the first time, European companies are able to make use of the freedom of establishment guaranteed under Community law, without limitations. Moreover, their competitiveness will be enhanced, more foreign direct investment attracted to Europe and psychological barriers overcome. By taking this first and decisive step, the European legislator has introduced one of the most important and prestigious legislative measures in European company law and therefore has fulfilled the legal requirement of completing and realising the internal market also for companies and groups in the matter of their legal form of business organisation, thereby enhancing efficiency and competitiveness.

In this way financially costly and complex networks of subsidiaries, governed by the different company law regimes of different member states, may be avoided; efficient management and corporate governance structures may be realised; and cross-border mergers of companies from different member states, as well as cross-border transfers of corporate seats, may take place without incurring the costs and difficulties involved in the dissolution and new foundation of legal entities. According to the Ciampi Report, administrative and legal costs may be reduced by up to €30 billion per year as a result of introducing the SE. Moreover, companies from the United States (such as General Motors or Ford) or from Japan (such as Minolta or Sony) will be able to use the SE as a corporate vehicle for their operations in Europe, with its European corporate culture and identity, and its European corporate goodwill. Consequently, European enterprises, as well as enterprises from third countries, may realise a number of benefits and reduce administrative, transaction and legal costs by means of the SE as a supranational European form of business organisation in contrast to the alternative legal and organisational structures of public limited-liability companies based on different national company laws. Thus, the flagship of European company law may be regarded as one of or even the most flexible corporate platform for enterprises operating in Europe. It will also serve as an engine for further European integration.

However, the European Company Statute, in accordance with the concept of the internal market, is rather a legal framework (and one which pays special attention to cross-border situations) than a comprehensive European statute. It is therefore particularly dependent on active promotion on the part of the different member states, which are – among other things – obliged to ensure that national provisions subordinately applicable to SEs do not impose disproportionate restrictions on SE formation, on the transfer of its corporate seat across borders or on its running. It is therefore the responsibility of the member states to take additional and no less decisive steps before the ECS enters into force on 8 October 2004, not least to introduce a suitable tax framework to overcome existing tax obstacles and to prevent unacceptable tax costs. The member states must decide whether they want to achieve the Lisbon objectives and make the EU the most competitive and dynamic knowledge-based economy in the world by 2010.

‘TAKING RESPONSIBILITY IN AN SE’ – A NEW CHALLENGE FOR WORKERS FROM DIFFERENT CULTURAL AND POLITICAL BACKGROUNDS

BY ROBERT TAYLOR

'TAKING RESPONSIBILITY IN AN SE' – A NEW CHALLENGE FOR WORKERS FROM DIFFERENT CULTURAL AND POLITICAL BACKGROUNDS

The cause of industrial democracy in Europe has a long history. Indeed, in some countries it can be traced back to the early days of the industrial revolution. Public discussions on what kind of representation workers should have inside the business enterprises which employ them were often stimulated by many of the continent's trade union movements. But from the beginning, important differences of opinion existed between European nation states on the active and positive role that workers might play in company affairs.

In European countries such as the United Kingdom and those in Scandinavia, trade unions secured important legal protections from governments so they were free to develop as collective bargainers through agreed negotiations with employers on the improvement of the wages and conditions of their members. But the demand for direct employee representation on company boards was not a priority for such trade unions. They believed that they should not become involved in the decision-making of firms at the highest level because they feared that such a move would compromise their independence and autonomy as organisations that genuinely represented the demands and aspirations of employees. Moreover, they wanted to avoid as far as possible any intrusion by the state into workplace relations. The unions in the United Kingdom and in Scandinavia may have had different traditions but they all agreed that the best way to advance the interests of workers was through voluntary agreements and not the imposition of comprehensive legal rights.

Trade unions pointed out that to have worker directors* on company boards would bring about a genuine conflict of interest between capital and labour. They argued that unions needed to represent the specific needs and aspirations of employees and not the wider concerns of the firm as a whole. Inevitably, they pointed out, there could often be a difference of opinion between employers and their workers over sensitive issues such as plant closures, the laying off of workers and company restructuring that could make an adverse impact on the position of employees. Such issues would place worker directors in an impossible position, it was argued.

Instead many trade unions, especially in Scandinavia, wanted to make themselves strong and effective workplace institutions outside the boardroom so that they could exercise influence and power over company decision-making without having to share the burdens and responsibilities of shareholders and the owners of publicly listed firms.

But in other European countries, most notably in Germany during the 1920s, the trade union movement took a different view. While the trade unions in that country were also supporters of voluntary collective bargaining, they also believed that workers needed to secure a direct and often equal say over the affairs of the companies that employed them. Through a process of co-determination – it was argued - organised labour would gain a substantial part in the running of modern firms, making them both democratic as well as entrepreneurial. Many trade unions in Germany, especially after the end of the Second World War, believed such an ambitious objective should become an important part of a much wider programme of workplace democracy which would lead eventually to the creation of a planned market economy where organised labour came to exercise a dominant control.

* The term "worker director" means the representative of employees on the company board. It must be distinguished from the German "labour director" (Arbeitsdirektor) who is the human resource manager within the management board.

However, such a view was never really accepted by trade unions in most other European countries with the exception of Austria. In democratic southern Europe, in particular, where industrial relations were usually characterised by a tradition of conflict and trade unions saw themselves involved in a class war with organised capital the idea of German-style co-determination was normally criticised as an unacceptable form of class collaboration. Trade unions in southern Europe and also in France believed they were very much vanguard organisations who existed in order to represent workers in struggle. Their aim was to challenge the power and authority of employers and not work in cooperation with them. Such a view was also shared by the trade unions in Portugal and Spain after the end of Fascist rule in those two countries.

In reality, the public debate over employee representation on company boards suffered from widespread indifference, neglect and confusion among many trade unions across Europe. For much of the 20th century it rarely became a predominant or urgent issue on most trade union agendas outside German and Austria. It is true that in the immediate aftermath of the Second World War some genuine advances appeared to have been made towards the establishment of worker directorships on company boards in a number of countries. The victory of democracy in 1945 unleashed a widespread and popular mood of hope that workers could create a more socially just and equitable society, of which industrial democracy would be a part.

Trade union movements at that time were keen to insist that workers should demand and exercise a much greater degree of power and authority over the economy of their countries than they had done in the past. In Italy, for example, the country's new constitution of 1946 actually laid down that it was 'the worker's right to co-operate in company management, according to the mode and limits established by law'. The preamble to the French constitution for the Fourth Republic stated that 'every worker, through his/her delegates, has the right to participate in the collective determination of working conditions and the management of companies.'

In practice, however, little progress was achieved in turning such aspirations into reality in either France or Italy. It is true that governments in some European democratic countries agreed in principle to introduce forms of direct employee representation onto the boards of state-owned enterprises and public service agencies. But it was not until the end of the 1960s that the debate on the future of industrial democracy came to the forefront of the trade union agenda. After Italy's so-called 'hot' autumn of 1969 and the 'events' in France in the early summer of 1968 it seemed as though organised labour was on the march across much of western Europe. The cause of worker participation and even worker control of the means of production became fashionable and many trade unions began to demand direct access to company decision-making in the name of social justice and the right of labour to power in the workplace in a capitalist society that they believed to be in terminal crisis. The upsurge of industrial militancy through the widespread use of strikes and other forms of industrial disruption precipitated a more fundamental discussion about what the role of workers should be in democratically organised economies.

As a result, the public debate on a proposal to provide the opportunity for employee representation on the boards of private companies that operated across national borders grew in intensity and importance after 1970. In 1972 the European Commission drew up draft legislation in the form of the so-called fifth directive on company law. This declared a bold objective; that all companies employing 500 or more workers should be required to establish two tier board structure very much on the lines of West Germany's system of co-determination. Under the draft directive the company's management board would be responsible for the day to day running of the enterprise but it would be appointed and over-seen by a supervisory board to which it was ultimately responsible and that body would contain up to a third of its members as representatives from the company's employees.

Inevitably such an ambitious plan ran into formidable opposition from many companies who launched intensive lobbying on the Commission and European Community member states calling for its rejection. Over the next eleven years the fifth directive went through innumerable drafts and revisions as the Commission attempted to reach a flexible compromise that would accommodate the concerns of those who feared such a measure would threaten the market economy and provide trade unions with too much control over a company's commercial operations .

However, the European Commission would not retreat from the general principle that those people who were to be substantially affected by decisions made by social and political institutions must be involved in the making of those decisions. In 1973 it even asserted that 'employees are increasingly seen to have interests in the functioning of enterprises which can be as substantial as those of shareholders and sometimes more so'. It concluded that the decision-making structures to be established within the proposed European Company needed to reflect that undeniable fact.

A strong emphasis was placed by the European Commission from the very beginning of the discussions in the 1970s on the demand that employee representatives needed to be present as active participants on company boards as an integral part of a much wider employee participation system that affected all levels of the enterprise. This general principle was becoming widely acknowledged at that time in the domestic legislation of the majority of European Community member states.

It is true that the Commission came to realise that it would not be possible to impose a rigid German-style two tier company board system across western Europe and especially in those countries where existing company law required corporate governance through the operation of only one board to run and supervise the enterprise and not two. Instead, it was suggested that firms under the proposed directive could choose from five different structures at company level in order to meet the aim of providing employees with direct representation in their decision-making processes.

However even the absence of an inflexible and comprehensive blueprint laying down the exact form that employee representation needed to take on company boards was not enough to win over the Commission's critics who continued to oppose any legally-driven move that would insist on the statutory enforcement of worker directors on the boards of large companies operating in Europe. In 1983 the whole issue was shelved with no prospect of an end to the deadlock on the proposed legislation.

The Commission's early attempt in the 1970s to establish employee representation on company boards at European level failed not only because of the fierce resistance of many companies, especially those with their headquarters based in the United States but also because of the sharp division of opinion that emerged on the merits of the proposal among national states. The United Kingdom led by its prime minister Margaret Thatcher after 1979 was strongly opposed to any measure that proposed an extension of worker or trade union power in the running of either national or transnational-based enterprises. But many other member governments privately also agreed with her at that time.

On the other hand, trade unions in West Germany feared that the more flexible options being proposed by the European Commission would threaten to undermine their more robust co-determination system and provide a means of escape for those German companies that wanted to weaken or marginalise worker directors on their own boards.

The new European Company (SE) Statute with its accompanying directive on employee representation that comes into force from October 2004 aims to put an end to the impasse that halted the proposals made nearly thirty years ago. But of course, the mere passage of legislation on employee participation in newly formed enterprises to be designated as European Companies that are governed by new laws that transcend national systems can only be the beginning and not the end of what still promises to be a prolonged, complicated and difficult process of adjustment as such new enterprises come into being under the terms of the Statute. Indeed, it is possible to argue that the Statute will not bring about the trans-national systems of employee participation at board level that earlier enthusiasts always envisaged, or at least such an outcome will not be achieved for a very long time.

The dominant reason for this is that many of the basic arguments over the issue of employee representation on company boards that were made back in the 1970s still remain highly relevant. The national differences that existed at that time have not gone away. Indeed, in some countries they have grown into more formidable obstacles to any advance to employee representation at board level.

But the whole thrust of the current Statute appears to be aimed very much at the protection of existing forms of employee boardroom participation where they exist by law in individual member states. As Professor Paul Davies at the London School of Economics has pointed out: 'Employee participation through the company board is mandatory only where such participation is a substantial feature of the national laws applying to the companies which form the European Company.'
One of the primary objectives of the legislation is to try and prevent an undermining of existing national provisions on board level employee participation rather than further the wider cause of employee representation in the proposed new European Companies. Clearly the new Statute reflects a different mood in Europe than that which existed in the 1970s when industrial democracy was seen by many trade unions as part of a bold programme designed to further the interests of workers. Today there is greater caution and moderation and more understanding and recognition of the difficulties of implementation caused mainly by national differences that are a product of ideology and tradition.

This is why the way ahead on the use of the European Company Statute looks uncertain and problematic for many trade unions and workers. Understandably some of them would like to use the opportunity that may be opening up to them through the new legislation to strengthen their role in the decision-making processes of the enterprise. But on the other hand, many may fear, though wrongly, that those employers who are interested in the establishment of European Companies will seek either to substitute or challenge trade unions by trying to introduce other forms of collective association that are either dominated or even sponsored by management.

The European Trade Union Confederation is well aware of this apparent danger. At its 2003 Congress in Prague delegates agreed to press for the development of a common strategy that aims to strengthen the position of trade unions in the new company structures and ensure that those employee representatives who are mandated and elected by employees are included on either the company's managerial or supervisory boards.

In order to guarantee a high level of employee participation in their domestic structures, trade unions in many member states are also determined to ensure that their country does not make use of the opt-out clause which enables it to refrain from applying the standard rules in the case of a merger.

However, resistance to the inclusion of employee participation in the European Company Statute has proved to be fierce and widespread over the years and the opposition has not been confined simply to employers. Indeed, many trade unions across the European Union still acknowledge that they face genuine difficulties as they attempt to reconcile their own traditions, attitudes and practices of employee representation in company level decision-making within their own countries to the requirements of a Statute that seeks to transcend national frontiers and differences.

It is true that the diversity and flexibility of approach towards employee participation between most member states is recognised in the actual wording of the European Company Statute. Critics who suggest that its purpose is to spread the German system of co-determination across the different systems of corporate governance applicable elsewhere are mistaken, even if the German system has exercised a substantial influence over the wider thinking that was behind the drafting of the legislation.

On the other hand, the European Company Statute is trying to protect existing forms of employee representation in companies that are already operating in different member states. Its avowed intention is not to either undermine or water down what already works in practice at national level. But the legislation also seeks to ensure that there are common obligations involved in its implementation. Perhaps inevitably these look narrowly limited and hard to define. The outcome therefore will depend on how workers' participation within the European Company is jointly negotiated between employers and employee representatives and the outcome of this process will depend on what existing employee participation laws allow in individual member states.

What is also very clear from the European Company Statute is that its intention is not to replace or substitute existing systems of employee participation at boardroom level in member states. Its authors have been anxious from the beginning to ensure that the proposed European corporate level of employee representation is an addition to what is already being practised and not an alternative. They have been understandably anxious to encourage forms of flexibility, pluralism and experimentation that go with and not against the current of mainstream national state based traditions of industrial relations. Indeed, the European Company Statute has sought to reconcile a commitment to a strong system of employee board representation with the diversity of practice that exists within most member states. As a result, voluntary agreements that are reached jointly between the management and employee representatives on the structure of employee participation at corporate level take precedence over the directive's own rules.

The wording of the European Company Statute may often seem opaque and complex and as a result its development is likely to prove to be slow and difficult. But its underlying objective is certainly radical and far-reaching in its potential. The important question, however, is whether it is relevant or not to the realities of the new kind of European enterprise that is envisaged for the 21st century. In the long term the evolution of the new European Company in the globalising world economy is going to provide an important and challenging test of the underlying resilience and adaptability in the so-called European social market model that is now coming under sustained attack from those who want to americanise the European Union's political economy and impose a neo-liberal economic agenda that downgrades and limits the rights of workers as well as the concept of any social dialogue between employers, unions and employees.

This wider context within which the European Company Statute needs to be assessed was emphasised by the 1997 group on worker involvement chaired by Etienne Davignon, which first revived the serious debate over industrial democracy that led to the passing of the new legislation in 2001. As it explained;
'One of the most visible consequences brought about by the internationalisation of markets and by globalisation is the need to optimise all economic and social resources within national economic systems. This common objective can only be pursued through cooperation between all the actors involved.'

This comment reflects an important change of direction in the purpose of the legislation compared with that of thirty years ago. During the 1970s the arguments in Europe over employee representation at company board level were focussed very much on organised labour's own perspectives. It was seen then as an important advance for the cause of industrial democracy in providing robust worker rights in the firm based on recognised principles of representation. Not enough of the debate at that time was concerned with either the commercial and competitive needs or demands of enterprises themselves. But now the attitude of employers has become crucial for the success or failure of the European Company Statute in practice.

As a result, trade unions themselves who favour the development of direct worker representation at enterprise level will have to argue and negotiate their case with the business community on grounds that will aim to improve corporate performance and workplace modernisation rather than what it will do to further the cause of social justice. It is therefore the market case for industrial democracy that has to be made at European as well as nation state level if the new legislation is going to make any real impact on the way companies go about reaching their business decisions.

Indeed, the initiative for the establishment of a European Company lies solely in the first instance with employers and not their employees or with trade unions. It is they who will be required under the law to initiate negotiations on what arrangements they intend to establish in the involvement of their employees in the decision-making processes of the new undertaking. The special negotiating body that has to be formed for this purpose will require to have at least one employee representative from each country in which the company will be involved. But it is for each member state's existing regulations to decide what methods should be used for the election or appointment of the members of that special negotiating body. This will provide national governments with considerable room for manoeuvre on how they implement the Statute in their own countries. They can decide whether trade union representatives should be included even if they are not employees of a participating company and they can also determine to limit the funding of external expertise to the special negotiating body and the 'SE works council' to a single expert.

The strength of the new Statute lies not only in its flexibility but in its recognition that it is part of a much wider programme of workplace change that links up legal entitlements at European level to voluntary collective negotiations between social partners within companies in nation states. The European Works Council directive which is already in existence and the directive on employee information and consultation rights at national enterprise level that will be introduced in stages after March 2005 are also both essential ingredients in what could turn out to be an enlightened and progressive way forward inside modern companies in strengthening employee representation behind the mutual objective of corporate success.

The most effective advance under the European Company Statute is most likely to emerge out of existing workplace structures which are at present centred around consultative works councils and collective bargaining institutions. Almost all European Union countries except for the United Kingdom and Ireland already have works councils or similar consultative bodies in existence in their industrial relations systems. While those legally based institutions may differ in the powers and responsibilities they enjoy and the role they exercise among employees and in regard to employers, they are now a firmly embedded institutional presence for workers and trade unions in most large and medium-sized enterprises in both the private and public sectors across much of western Europe. Even in France, where union density remains low, the enterprise committees are a crucial feature of workplace life.

Of course, works councils are not vibrant bodies in every country. Many find it often difficult to sustain themselves in the face of worker indifference and company neglect. They are seen at their best where they are under the effective control of union workplace representatives. But their recent development suggests that such consultative bodies are important in workplace modernisation and job restructuring. They reflect the new realities of human resource management as firms move away from being hierarchical and disciplined organisations with a centrally controlled command structure. In the new world of paid work organisation the emphasis is on establishing flatter systems of decision-making centred around work teams and employee networks and clusters of expertise. The emphasis is on the common dissemination of information to all employees through representative but also directly accountable institutions that are often flexible and consensual.

The relevance of the European Company Statute is in what it proposes for employee representations. It fits into this existing system of workplace decision-making. This does not mean that the arrival of employee boardroom representation in whatever form it will take under the legislation will bring an end to all differences of opinion between managers and employees, let alone between shareholders and employees. But the historic compromise of capital and labour within the revived European social market model that is now being envisaged through the concerted legislative programme being introduced by the European Commission can provide a framework for partnership. However corporate outcomes will depend very much on how the new proposed companies can thrive and advance in a highly competitive global economy of the future.

Early trade union fears that worker directors on company boards would mean their isolation at the top of a pyramid of corporate power now appear to be groundless. Indeed, it is the establishment of strong and permanent links between those employee board representatives and the works council consultative process that will ensure the most effective form of participation for workers in the new European Companies. Their ultimate success, however, will depend on building the structures from the bottom up and not from the top down. This poses a real intellectual challenge to the trade unions and workers as well as to the employers. It implies driving through a kind of cultural revolution inside the modern firm that turns it into much more of a community that can accommodate mutual interests.

The majority of European Union member states may continue to provide, in their own domestic legislation, for some forms of company board-level representation for employees through legally-enforceable regulation. The national differences in approach to the issue which were highlighted back in the 1970s remain and they are explicitly recognised in the new legislation.

It is true today that only the United Kingdom among European Union member states still lacks any laws at all that at least provide for a legal minimum in the development of worker board-level representation. Indeed, in the United Kingdom the general existence of resilient and effective forms of worker representation at board level and even in information and consultation systems outside the board remains limited although there is nothing to prevent a company and its employees from developing democratic structures of employee representation if they wish to do so.

But many other European countries maintain what are rather weak and restricted forms of employee representation at company board level. In Greece, Portugal, Ireland and Spain, for example, board level employee representation is confined almost exclusively to public sector or state-owned enterprises. Moreover, while it is true that consultative works councils below board-level representation exist in Belgium and Italy neither of those two countries has more than a handful of companies outside the state sector that have boardroom employee participation.

In contrast, the most advanced model of employee representation at board level in companies still remains that of Germany. Despite growing opposition among many of the country's employers to what they see as the labour market rigidities of the German model, there is less criticism than there used to be about the co-determination system.

A commission set-up by two German foundations, each of which was close to one of the social partners (Bertelsmann Foundation and Hans Böckler Foundation), reported in 1998 on the experience of co-determination, taking a positive view of its progress. It argued that the country’s unique system of corporate governance still remained ‘one of the central pillars of Germany’s economic order’ and insisted that it ‘must be retained and developed further as an element of the social market economy’. As the commission concluded, co-determination is ‘oriented towards cooperation and is therefore incompatible with any form of confrontational ideology. Where it functions in accordance with the idea of cooperation, it is in equal measure a means of social integration and effective corporate leadership, combining as it does social responsibility with economic reason.’

The initial employer hostility to the 1976 legislation on co-determination that extended its use beyond coal and steel appears to have gone. Certainly the commission found widespread support from many companies for the system which appears to have turned out to be a more positive rather than negative reform in the development of German corporate governance.

Perhaps one of the most effective systems of employee representation at board level can be found today in Sweden. Up until the early 1970s the trade union movement in that country did not seek such an advance. It believed it should use its impressive collective strength to further the interests of workers through national agreements negotiated with employer associations and voluntary action in the workplace. The law – as in the United Kingdom – was seen as a secondary means of exercising worker power and authority. But there was then an important strategic change of attitude in the Swedish trade union movement, which decided to press for national legislation to achieve its objectives.

The 1973 Act on employee board representation, rewritten in 1987, was resisted at first by Sweden’s employers. But for the past twenty years it has brought about a significant modernisation of the country’s corporate governance. The success of the legislation has stemmed from the strong workplace trade unionism upon which boardroom worker representation has been built. As the traditional importance of national and sector-wide bargaining went into decline in Sweden during the 1980s and 1990s, company-based and workplace activism grew more important.

A survey carried out by the trade unions in 1998 found an extraordinary level of satisfaction at the impact of employee board representation in Swedish enterprises. Over 60 per cent of managing directors and chief executives polled said they believed such participation contributed to a positive climate for cooperation in their enterprises and nearly as many added that it had improved worker understanding of decisions reached by the board. Worker representation at board level also seems to have made it easier for employers to win worker support for difficult decisions.

For their part, trade union activists said they were well pleased by how the system was working. They believed that board representation was of strategic importance in supporting workplace trade unionism. Most also did not think companies made decisions outside the board to avoid employee participation in them while only a handful felt that workers found the issues raised on boards were complicated or difficult to understand.

It is no coincidence that the Swedish system of employee representation at company board level has evolved during a period when the country’s firms have gone through radical restructuring, massive technical innovation and modernisation to face the relentless challenge of open global markets. Indeed, the Swedish example ought to be a useful example for those who believe worker representation in companies can strengthen and not obstruct necessary change in competitive firms.

The same is also true for the similar system that operates in Denmark. As in Sweden, the initiative for such a reform came initially from the country’s federation of trade unions in the middle of the 1960s. Employee representation at board level was first established under a 1973 law that covered many companies whether publicly or privately owned. The Danish experience suggests employee participation is now well established in many firms at the highest level. It has recently been estimated that 60 per cent of the country’s workforce are now employed in enterprises which have employee directors. Over two thirds of companies employing more than 200 have them although only a fifth for enterprises with fewer than 200 employees do so. As in Sweden, Danish employee boardroom representation is an integral part of a resilient and active workplace trade unionism. The positive influence from the trade unions in the Nordic region has stemmed from a decentralising of their structures. This has helped them to establish a successful system of rights and practices in companies administered by a cadre of impressive workplace activists.

Just as crucially, the evolution of employee representation at boardroom level in the Nordic region reflects the progressive and modernising tendency of its trade unionism. Too often the whole issue of worker participation has been judged in relative isolation from the culture and evolution of the modern firm. The success of the flexible and negotiated system in Sweden and Denmark as well as Finland stems from the way in which it has embraced the agenda for work restructuring and innovation. The dynamic for adaptation in companies in the face of increasingly competitive and open product markets has become predominant. As a result, a growing number of companies have taken the initiative in establishing, through negotiated agreement and cooperation, new working practices with their own employees that emphasise joint decision-making and promote more participative arrangements.

The arrival of worker directors in private sector companies is therefore increasingly seen by Nordic region employers as an added competitive advantage for them and not a threat to the future of their commercial operations. But of course this system has grown up from below, from a consensual commitment to social partnership in the firm and to more collaborative forms of corporate governance that seek to minimise or even eradicate conflicts of interest in the company. The reasons for its apparent success reflect the underlying strength of the so-called Nordic model of industrial relations.

But the positive strengths of the system are by no means confined to a handful of small countries in northern Europe or to Germany and Austria. The introduction of employee representation at board level in companies may carry positive consequences for other European market economies with different traditions. Indeed, the change can be seen as an important part of a revolution in business culture. In the future, if firms wish to prosper, modernise and innovate in competitive markets they will have to win the active consent of their employees. This means that companies will have to give a higher value than in the past to the people who work for them through the funding of higher quality training programmes, the provision of more generous wage and non-wage benefits and most important of all displaying a stronger commitment to human development strategies that are based on the fostering of mutual trust, commitment and loyalty between workers and their firms.
The Davignon report explained this process; ‘ Globalisation of the economy and the special place of European industry raises fundamental questions regarding the power of social partners within the company. The type of labour needed by European Companies – skilled, mobile, committed, responsible and capable of using technical innovations and of identifying with the objective of increasing competitiveness and quality – cannot be expected simply to obey the employers’ instructions. Workers must be closely and permanently involved in decision-making at all levels of the company.’

The European Company Statute and its accompanying directive on worker involvement must therefore be seen in this wider perspective. It is an integral part of a much more inclusive development in the reorganisation of the world of paid work in Europe so that the continent will be able to challenge its international competitors, most obviously the United States, through a more effective and productive use of labour in the new high technology, high skilled sectors of the post-industrial economy. In other words, the legislation should not be regarded as an intrusive and cumbersome system of time-consuming litigation designed to handicap European enterprises. On the contrary, it may turn out to be one of the basic preconditions for the success of European-wide entrepreneurialism based on negotiated common agreements between firms and their employees on strategic corporate objectives and the means of achieving them through joint decision-making or at least a robust form of worker participation.

But it is also important to recognise that there are opposing trends in Europe today that could threaten the development of employee representation on company boards at both national and European level.

Ireland in recent years has developed its own increasingly substantial form of social partnership and the country’s government has encouraged employee participation in state-owned companies and agencies. Under legislation passed in 1977 Ireland’s trade unions, staff associations and other designated bodies were given the legal right to nominate candidates for election as worker directors to the boards of the country’s state-owned bodies. However, such laws did not extend to the dominant private sector of the Irish economy where employee involvement at board level has been left to voluntary agreement between the social partners. As a result no prominent Irish-based private companies have worker representation on their boards. But the Irish government is now committed to a privatisation programme as it moves wholly or in part state-owned enterprises to the competitive market place. As a result, employee representation is threatened or being eradicated.

Developments across many other European states are also throwing a serious question mark over the future of worker participation at board level in companies. In Spain and Greece for example, there has also been a transfer of publicly owned enterprises into the private sector. As a result there has been a tendency to either abolish or water down existing worker participation at board level.

The arrival of ten more countries into the European Union's membership in May 2004, mainly from central and north eastern Europe, has added to the diversity of approaches to employee representation at board level in companies as in so many other aspects of industrial and economic life. Just as there is no coherent and single model in the previous European Union, nor is there any uniformity in approach among the new member states. Almost all of them had been ruled by Communist governments between the end of the Second World War and 1990 and their industries were under direct authoritarian state control despite rhetoric about worker democracy. But in the 1990s a range of responses emerged on employee representation inside newly privatised companies.

No doubt, the German system was influential in some cases. In the Czech Republic, Hungary, Slovenia and Slovakia the boardroom employee representation was introduced by law into both private and public enterprises. In Poland the worker self-management act of 1981 still applies to state-owned companies. If one of these companies is privatised, employee board representation has to be introduced. But there is no direct legal provision for worker directors in private companies in Poland, and the same is true of Malta and Cyprus. In the Baltic states there is no provision for worker representatives on the executive boards of companies.

National differences can also be found in the number and the method of election of worker directors. In the Czech Republic, Hungary and Slovakia, for example, up to a third of the board members are elected from the workforce. But in Poland the statutory maximum proportion can go as high as 40 per cent. Moreover, in some of the new member states works councils are responsible for the elections to board level and in others the trade unions.

But the gap between the law and the rhetoric and the reality of life in existing enterprises remains enormous in most of the new member states. The experience of employee boardroom representation has been short-lived and limited to only a few workers and companies. Ideologically, many employers and their workers are uninterested in developing such forms of employee representation. They believe such an approach is a threat to the success of the market economy.

However, the introduction of the European Company Statute may make a real difference. The resulting cross-border influences could stimulate greater enthusiasm among employees and trade unions in the development of more a vigorous enterprise based activism. Undoubtedly trade unions in central and north eastern Europe face a formidable challenge to their power and influence as they seek to negotiate under the new legislation. It may well be that the arrival of employee board representation in the European Company will bring about a responsive approach with the building of works councils and other workplace institutions afterwards.

But there are a number of other important underlying trends that are common across the rest of the European Union which also obstruct further progress to employee board representation. We can see the increasing importance of medium and small firms in the development of the new post-industrial economies in Europe. It is hard to visualise such enterprises making much use of the European Company Statute.

Moreover, the strategic shift in paid employment away from the manufacturing sector to a diverse private services sector is increasing the area of the labour market that often lies beyond the large corporations. The new kinds of paid work – such as self-employment, agency jobs and part-time and temporary employment – will also make it hard to develop the concept of employee representation on company boards. The new system presupposes a permanent and full-time labour force in the enterprise. Worker participation in enterprise decision-making suggests the need for stable, loyal and committed employees. In the more fragmented and more insecure world of paid work across European countries such a labour force may prove much harder to retain and nurture.

On the other hand, the trend towards greater economic and social convergence inside the European Union should not be overlooked. The integration of markets, the continuing waves of corporate mergers and acquisitions, the spread of technological innovation across borders, the dynamics of open trade and investment flows – all point to a greater unity that could encourage firms to establish European Companies to further their activities. Moreover, although it is premature to speak of the emergence of a European labour force, there are signs in many professional and managerial jobs as well as in construction, retail and catering of such a development.

National differences are not going to be easily eroded and not least in the way in which companies organise their internal structures within the law. Many employers may believe that they need to pursue an American shareholder model of operation and lose interest in a wider perspective that includes the stakeholder or worker perspective. But we can find already enough examples in European countries that suggest employee participation at company board level can provide a commercial and competitive advantage.

It is difficult, however, not to avoid reaching a rather cautious conclusion. There is still a very long way to go before we can see the emergence of a regime of European firms complete with systems of corporate governance that involve employee board-level representation. The complexity of the new European Company Statute law reflects an understandable sensitivity to national differences. This is why it is unlikely that any uniform or comprehensive system of employee participation on company boards across the European Union is likely to develop in the immediate years ahead.

Thirty years ago there were far greater ambitions inside the Commission and elsewhere on the need to establish a mandatory and unitary system of board level employee representation on the grounds of social justice and worker advance. At that time the forces of labour seemed determined to gain co-equality with those of capital but this is no longer the case.
It is perhaps therefore not unsurprising that the details of the new Statute have so far failed to catch the popular imagination. But trade union attitudes need to change. Old resistances to partnership and collaboration with firms must be abandoned. If trade unions are to establish a future for themselves in the new Europe they will need to recognise that they must not only come to terms with globalisation but realise that they have to support and develop new forms of industrial democracy inside the firm that are in the mutual interest of workers and shareholders.

The European Company Statute is only a part but a very important one of a revival in trade unionism at European level that makes it relevant and necessary for future prosperity and security. However, this does not mean we should or can ignore the diversity of national traditions and practices. Nor does it imply that trade unions should abandon their principles about industrial democracy.

In the long run the creation of different levels of employee activism inside companies is a democratic right that cannot be surrendered. That view was well expressed in the British government-commissioned inquiry into industrial democracy chaired by the Oxford historian Alan Bullock in 1977. As his report argued at that time;
'The fears expressed in the nineteenth century in face of proposals to give more people the right to vote did not stop short of the subversion of the constitution and the dissolution of society. Once the franchise was extended, however, the fears were forgotten and the Reform Acts were seen as essential to the country's stability and prosperity. We believe that over 100 years later an extension of industrial democracy can produce comparable benefits and that our descendants will look back with as much surprise to the controversy which surrounded it as we do to that which surrounded the extension of the political suffrage in the nineteenth century.'

1960s

The debate on the European Company dates back to the beginning of the sixties. The topic was e.g. discussed at an **International Congress of Notaries** in Paris in **1960**. In **1965**, the **French government** issued a memorandum proposing to introduce legislation on a European Company by means of a treaty among the EC member states. This proposal was taken up by the **Commission** which, in **1966**, published a **memorandum** in support of this idea.

1970

Commission proposal to the Council of Ministers for an SE

On the basis of a draft proposal issued in 1966, in 1970 the Commission published a first proposal on the Statute for a European Company. This provided for:

- **obligatory two-tier structure of SE** (management board and supervisory board)
- **European Works Council** (information, consultation and some **co-determination rights**)
- board-level representation of employees **(1/3 of board members elected by employees, 2/3 by shareholders)**
- possibility of concluding (European) **collective agreements** between the SE and the represented trade unions on working conditions in the SE

OJ C 124, 10.10.1970

1975

(Revised) Commission proposal

With regard to the involvement of employees, the most significant change was the proposal for a **1/3 parity**: 1/3 of the board members to be appointed by the **employees**, 1/3 by the **shareholders** and the last 1/3 to be elected **jointly by the employees and the shareholders**.

COM (75) 150 final

1988

Memorandum of the Commission on the SE Statute (15/07/1988)

This memorandum followed the initiative to complete the internal market. In order to revive the deadlocked SE debate, the Commission dropped the idea of having one obligatory participation system for all SEs. Instead companies were to be given the **choice between different participation systems**.

EC Bulletin 3/88

1989

Commission proposal

In this new proposal, the SE legislation was for the first time split into a regulation and a directive supplementing it and dealing with employee involvement. Companies now had the choice between a single-tier and a two-tier structure. The Directive allowed **a choice between four different systems of board-level representation** (a "German", a "Scandinavian", a “French” and a "Dutch" model). If negotiations between the employees and the management failed, the **final decision would lie with the management**. It was left up to member states to choose which (some or all) of the four models they were prepared to accept for SEs registered in their country.

OJ C 263, 16.10.1989

1991

(Revised) Commission proposal

Member states could now prescribe for the SEs in their territory the choice of a particular company structure (single-tier or two-tier). The system of workers' involvement was slightly modified. If negotiations between management and employees on compulsory employee participation failed, a decision would be taken by the **Shareholders' meeting** on the basis of reports from the two negotiating partners.

Regulation: OJ C 176, 8.07.1991

Directive: OJ C 138, 29.05.1991

1994
Directive on European Works Councils (EWC)

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

1997
Davignon report

In order to overcome the blockade in the Council of Ministers with regard to the ECS, the Commission convened a **"High-level expert group on workers' involvement"**, the so-called Davignon group which, in its final report (published in May 1997), concluded that the national systems of workers' involvement were too diverse, making general harmonisation impossible. The report therefore proposed that priority should be given "to a **negotiated solution tailored to cultural differences and taking account of the diversity of situations**". Should negotiations fail, **standard rules** would apply.

2000
Adoption of the European Company Statute at the Council in Nice

The Davignon report had a positive impact on the drafting of a solution acceptable to all 15 member states. Even so, it was another three years until the more than 40-year-long debate on the SE came to an end. At the EU Council in Nice (Dec. 2000) the **Regulation on the ECS** and the **Directive on workers' involvement in the SE** were finally adopted.
The latter prescribes **free negotiations on information, consultation and (board level) participation** between the competent organs of the participating companies and a special negotiating body (composed of employee representatives from the different countries involved). In the event of failure of these negotiations, **obligatory standard rules** apply.
Member states were given the option of not applying the standard rules for (board level) participation in the case of an SE set-up by way of merger (this **"opt-out-clause"** was introduced at the demand of Spain). Member states must transpose the Regulation and the Directive by **October 2004**.
Council Regulation 2157/2001, OJ L 294
Council Directive 2001/86/EC, OJ L 294/22, 10.11.2001

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WORKERS' PARTICIPATION AT BOARD LEVEL – *TOUR D'HORIZON* ACROSS THE EU-15 COUNTRIES

BY ROBERT TAYLOR*

WORKERS' PARTICIPATION AT BOARD LEVEL – *TOUR D'HORIZON* ACROSS THE EU-15 COUNTRIES

Austria

Austria has a long tradition of employee representation in the workplace that dates back to the creation of works councils under legislation passed in 1919. In public companies the works council was able to delegate two of its members to the company's administrative board, where they enjoyed the same rights and duties as other board members. In 1934 a law was passed to establish works assemblies in enterprises. These were meant to deal with matters of common interest in the company and not issues that were on the collective bargaining agenda.

Today the system of employee representation in Austria is regulated under a Labour Code that first came into force in 1974. Under that measure workers have the right to representation of up to a third of the members of the supervisory boards of public limited-liability companies and all the country's companies that employ 300 or more workers. This law covers a wide range of institutions, including stock corporations, limited-liability companies, mutual insurance associations, savings banks, cooperative societies and private foundations. It is estimated that there are 1,500 companies in Austria that now have supervisory boards on which worker directors sit. As many as 400,000 workers are employed in those enterprises. This amounts to 15 per cent of the country's entire workforce.

Under Austria's 1974 Works Constitution Act a company's works council may delegate one member to the supervisory board for every two members who are elected by the representatives of the employers. Workers are not entitled to more than a third of the seats on the supervisory board nor on the company's committees. The supervisory board must consist of at least three shareholders' representatives. Its total size may range between 7 to 20 shareholder representatives.

The worker members of the supervisory board must be taken from the elected members of the company's central or single works council and they enjoy full voting rights. Trade union representatives cannot be delegated to join the supervisory board although they can be elected onto a company's works council. The worker directors must be protected from discrimination or restrictions and they must also be granted paid time-off from their jobs in order to perform their supervisory board duties. An adequate balance between blue and white-collar workers must be established among the employee representatives on the supervisory board. No restrictions cover the rights to co-determination or decision-making by the employee representatives. They have unlimited voting rights on issues of economic importance.

But the employee representatives, like the rest of the supervisory board, are obliged by the law to perform their duties with the interest of the company as a whole in mind. This means they need to take into account the views of shareholders and the general public as well as the employees when making decisions. On the other hand, this does not prevent them from defending the interests of employees. This can lead to potential conflict of opinion between those of the worker director's duties towards the company and those to employees when it comes to the need to maintain commercial confidentiality. However, employee representatives are allowed to pass on a limited amount of company information to the works council as long as this is covered by the rights to information and disclosure laid down under the 1974 Act that is deemed necessary to represent employees' interests. Annual works assemblies are held in firms as well. The works councils are dominated by the trade unions and they act as intermediaries between the employer and employees. In Austria those bodies are not only highly effective in the

* Based on the country reports written by the experts who were involved in the project (see expert list in the Annex)

dissemination of information and consultation in the enterprise but they are also involved in a range of workplace issues such as the day to day business of the firm, cases of individual dismissal and changes in working practices.
A special feature of the Austrian system is the obligatory list of business transactions which may be submitted for approval by the management board or managing director only after the consent of the supervisory board has been obtained, e.g. acquisitions, sales and closure of plants, investment, the start and discontinuation of lines of business and types of production or the definition of the general principles governing business policies.
Austria has a highly developed system of industrial relations based on the concept of social partnership. It retains strong trade unions and employer associations as well as effective works councils in all enterprises employing five or more workers.

Belgium

Worker representation does not exist on the executive boards of Belgian private companies. The system of corporate governance is based on a single administrative board that is either elected or appointed exclusively by the company's shareholders.
As in other European countries, the works council system is highly developed in Belgium by law. The works council is jointly made up of employee and employer representatives and it is mainly a means for ensuring a regular flow of information and consultation within the firm. In addition, trade union shop steward committees also exist in the companies and these work in close cooperation with the works councils, which the trade unions dominate. But Belgium does have employee representation in some parts of its public sector, most notably in the state railway company where 3 out of 23 members of its administrative board are nominated by the trade union and elected by the workforce.

Denmark

Denmark went through a relatively turbulent period of change in its industrial relations system in recent years. Traditionally the country has had a highly intricate and robust social partnership between employers and trade unions with a minimum role played by the state and by the legal process. Its main emphasis was on the negotiation of voluntary collective agreements and the use of conciliation and arbitration to resolve differences. But in recent years there has been a clear shift towards decentralisation from industry or sector level to that of the enterprise, mainly under the influence of employers who have sought to achieve much greater flexibility in the management of their business operations.
As in other European Union member states legislation enabling employee representation at board level in both private and public companies was passed in 1973. It covered all such enterprises that employed more than 50 workers and enabled employees to elect at least two representatives to the board and up to a third of the board whatever its size. The proportion was raised to one third of all company directors from 1980. Further changes were made to the legislation in 1987 which laid down such companies are now covered by its provisions if they employ 35 or more workers and up to half the number who are elected by the shareholders with a minimum of two. However, no employee board representation is required unless such a change has won the initial support of workers in the company involved. A total of 10 per cent of the employees need to request such a procedure for it to come into being. All employee representatives in Denmark are elected for four year terms as board members directly by the workforce.
Such a system is only part of a much wider diversity of worker representative bodies in the company. In addition to trade union workplace committees, many enterprises employing 35 or more workers in Denmark also have joint cooperation committees which are made up of equal numbers of employee representatives and managers. These bodies may not deal with issues that involve collective bargaining but they do have a wide range of responsibilities in the company. These include the provision of financial and production information about company operations, working conditions, training, job restructuring and personnel questions.
The existence of the joint cooperation committees outside company boardrooms dates back to 1947 in Denmark. Subsequent legislation has modified or changed some of the details of how the system operates. But it has won considerable support from companies, trade unions and employees. The experience of such a vibrant and consensual approach to decision-making in companies made the advance to employee board representation more acceptable and credible.
The support for worker directors can be found in a study carried out between 1995 and 1999 by Copenhagen business school on the role of employee directors in Danish companies. It found as many as 60 per cent of workers in the country were working in enterprises with employee directors. Two thirds of firms employing 200 or more had such representation on their boards and one in five of

the smaller enterprises with fewer than 200 workers on their pay-rolls.

The most remarkable finding in the survey concerned the priorities held by employee directors on what the company they worked for should regard as the most important. All those involved in the survey were asked to name what they believed to be the crucial considerations when making large and long-term decisions for the future of the enterprise. Employee directors said that markets were the key factor in determining what the company should do, followed by innovation. The next consideration did concern the firm's employees. This was deemed a more important factor than attitudes to the wider society and the shareholders, which was the lowest issue of concern.

What is so surprising about this order of priority among employee director decision-makers is that it proved to be the same as those listed by the directors elected by the shareholders. Although the actual results were not exactly the same in the importance attached to each priority, the fact is that the Danish survey found a convergence of opinion on the company boards examined between employee and shareholder representative directors. Apparently a strong common interest is shared in companies about what needs to be done to improve performance. Such a finding strengthens those who believe the advance of employee directors in companies has a beneficial impact on business operations. Far from adopting a defensive and reactive attitude, worker directors see the strategic importance of pressing for policies that reflect market conditions and the need for innovation. The Danish example is another positive sign that the concept of employee representation on private sector company boards makes good business sense.

Finland

Finland is one of the few European countries which already have experience of both of the possible structures for an SE: one-tier and two-tier.

Historically Finland has had until very recently a highly centralised and corporatist industrial relations system with a strong state in alliance with powerful trade union federations and employer associations to administer the political economy. But until recently there was also a contrary tradition of industrial conflict between employers and employees. Somehow Finland was able to reconcile a corporatist with an adversarial system.

As a result, worker participation at company board level was slow to gain support. Indeed, the very concept of industrial democracy was not well developed in Finland until 1979, mainly because the country's trade unions and employer associations were unenthusiastic about such a development.

It was only in that year that a law was passed that provided for the creation of co-determination structures in commercial undertakings. This measure formalised the rights of employees to information, negotiation and co-determination at board level in private enterprises employing more than 30 workers. Under the law there must be a maximum of between one and four employee representatives but they should constitute no more than a quarter of the company board members.

The workers themselves are entitled to elect their own representatives directly but they can also be elected through recognised trade union structures.

But the 1979 legislation was not concerned with giving employees a direct influence in the decision-making of companies at board level. Its main intention was to encourage greater co-operation between management and employees outside the board decision-making process and to improve the working environment by collective agreement at enterprise level.

It was not until 1990, however, a specific law was passed in Finland that provided for the direct election of worker representatives to the boards of private companies which employ more than 150 workers. This law is implemented through an agreement between the company and its workforce. Under this agreement, both sides must together on which board in the company the workers should be represented. And the number of worker directors. Basically, employees may sit on a variety of boards: the supervisory board, the board of directors or the management group. Such a binding agreement may of course be concluded – on a voluntary basis – in companies with a workforce of less than 150. The personnel groups supporting the agreement must represent at least the majority of the employees.

If no agreement can be reached, two personnel groups representing at least 50 per cent of the employees, may demand the application of statutory minimum requirements. The law gives the employees the right to send representatives to one or more administrative boards. But in this case, the employer and not the workers can decide on what executive body the employee representatives can sit. Under the legislation there is a maximum of four employee representatives on the board of the company depending on its size.

The employee representatives are nominated by the personnel groups. If these do not agree on common representatives, election must take place. The candidates in these elections are nominated by the personnel groups. Employee representatives must always come from the employees in the company involved and not from trade union officials and others who are not employed by the firm.

Employee representatives basically have the same rights and duties as the other members on the board involved. However, they are not entitled to participate in making the decisions on the election, dismissal or contract terms of the management, the personnel's terms of employment, or industrial action. Furthermore, the agreement provides for a restriction on the voting rights of employee representatives.

Employee representatives are released from their regular work for the board meetings as well as for the necessary preparatory work. They are compensated for their relevant expenses and receive a fee for attending meetings outside their normal working hours.

A survey carried out in 2001 of employee representatives in Finland's metal and electronic industry found that the majority were satisfied with the increased cooperation achieved between management and labour but argued that the practical work of representatives on the board of directors needed to be encouraged. However, employee representation at company board level still remains underdeveloped in Finland. More than half of the firms in the country that employ between 150 and 200 workers have no employee representation in their structures at all. As many as a third of the larger enterprises lack such representation as well.

Although there may be no intensive public debate at present on the question of workers on company boards, the implementation of the European Company Statute promises to stimulate discussion in Finland. However, whether the issue gains a higher priority than it does at present on the country's industrial relations agenda remains debatable.

France

Until very recently France had no law that specifically requires or provides for employee representation at board level in private sector companies. This reflected the country's strong syndicalist traditions that tended to emphasise the commitment in many trade unions to the cause of workers' control of industry and worker participation. Although trade union membership remains very low, at no more than 8 per cent of the French workforce, the often trade union dominated enterprise committees in most firms remain an established and important institution in workplace life. It is those organisations that are a prominent feature of internal governance in the firm.

But lack of interest historically in employee representation at board level in France was also apparent among employers. In part, this reflected their determination to maintain an undisputed right to manage and the elitist character of their class backgrounds. French employers by tradition have sought to protect and advance their power in the workplace. As a result, the country's system of industrial relations was based more on conflict than consensus.

The limited advance of employee representation at board level was also a consequence of the specific capital structure of French firms. More than elsewhere in Europe they have been dominated both by the influence of the state and the direct control of the banks, who established close and stable relations between management and shareholders to the exclusion of worker interests.

The obstacles in France to the creation of worker directors in privately owned or publicly listed companies are therefore formidable. Until recently company law tended to encourage single, unitary boards of directors rather than a dual system on the German model with a division between administrative and supervisory boards. But under a 2001 law more flexibility is being encouraged in the way in which companies organise their decision-making processes.

Under the Statutes of joint stock companies it is possible but not compulsory to provide for the election of board members by the firm's employees through the enterprise committees. Moreover, only employees of the company are eligible. The proportion so elected must not make up more than a third of the entire board. But the ultimate power on whether such a system is acceptable lies with the company's shareholders who, at an extraordinary general meeting, can cancel such participation.

Under a 1994 law the annual shareholders meeting must discuss whether or not employees are entitled to board representation where employees hold more than 5 per cent of the capital. However, under another law passed in 2001 it is possible for employee representatives to be elected to the board of directors where they hold at least 3 per cent of the company's share capital. In practice, there are few joint stock firms that have employee representatives on their boards. But in this case they serve as representatives of the employee shareholders. This is fundamentally different from having the right of participation in one's capacity as employee of a company.

Employee board members in the private sector must not only be employed by the company but are also not allowed to have another mandate as a member of the company's enterprise committee.

But the position in France's public sector is different. As a result of a law passed in 1983 employee representation at board level was introduced into state-owned enterprises. The number of representatives elected depends on the size of the organisation concerned. Three can be elected in those bodies that employ between 200 and 1,000 workers. For larger enterprises up to a third of the board's members can be elected from among employees. They are not paid any salary for their service but nor are they expected to take overall responsibility for the governance of the firm unlike the other directors.

However, the public sector in France has been reduced substantially since 1986 under governments of both right and left with the movement of companies into the private sector. Nevertheless, board-level representation has not been abolished in case of privatisation. Depending on the size of the board, the Statutes of the company must reserve two or three seats to the employee board members.

However, the advance of private ownership into what was formerly state-controlled enterprise has expanded the importance of shareholder value. A wave of mergers and acquisitions as well as the growth in the pressures imposed by globalisation have all strengthened the position of capital at the expense of labour in corporate governance. Perhaps inevitably, as a result, France's company structure has moved more closely towards the so-called Anglo-Saxon model in recent years.

On the other hand, the system of worker representation below board level remains substantial in many French companies. The country has a well developed system of works councils or enterprise committees for all enterprises employing 50 or more workers. Under the 1946 law such committees were to be informed and consulted about the management and general situation of the enterprise, could appoint two members to attend board meetings and were given training facilities to perform their duties. The 1982 so-called Auroux laws went on to strengthen workplace institutions within the enterprise, especially the committees who have the power to manage the company's welfare and cultural activities.

In addition, employee delegates have to be elected in establishments employing 11 or more workers, who can present individual or collective grievances to management as well as raise issues concerning pay, labour discipline, health and safety questions and matters that concern collective agreements.

Trade union members can also establish their own separate workplace organisations in enterprises that employ 50 or more workers. In addition, France has health, safety and working conditions committees made up of 3 to 9 employee representatives as well as group committees covering a group of commercial undertakings.

Since 1986 public limited-liability companies in France have been offered the possibility of changing their internal rules to allow the election of worker representatives to their board but only with the right of discussion. However, representation on the board is an obligation and not an option in the inclusion of two members with an advisory role.

Germany

The most formal and advanced system of worker representation at company board level is to be found in Germany. It is a two-tier system with an administrative board that is responsible for the day-to-day running of the firm; and a supervisory board to appoint and control management. This is the clear legal order of the German "Aktiengesetz".

Therefore the supervisory board has a number of specific responsibilities laid down in the law. Primarily, the members of the company's administrative board must be appointed by the supervisory board. Further responsibilities include comprehensive rights to supervise and scrutinize management procedures, the right to inspect company books and reports and to inspect and approve the company's annual statement of accounts. In addition, the supervisory board can commission the auditors of the firm, employ outside experts to help them in their task, and call a general meeting if the interests of the company require this. More importantly, the supervisory board has the power under the law to approve a company's important investment decisions and large-scale restructuring measures and closures. It is also needed to approve of company mergers, acquisitions and disinvestments as well as taking loans out above a specific size.

The supervisory board is composed of representatives from the shareholders and the workforce. The employee representatives must be elected directly by the workforce themselves or by delegates who are elected from the workforce. According to two of the laws (Acts of 1951, 1976, see below) the trade union representatives can propose representatives on the supervisory board who are not employees of the company. But only unions with members in the company are entitled to make proposals for these seats. All of the workers' representatives have the same rights and responsibilities on the supervisory board as the shareholder representatives. They are also covered by the same codes of confidentiality in the conduct of their affairs on the board. The law protects them from discrimination or obstruction as they go about their business. They are allowed to serve four year terms.

Although its origins date back to the early part of the last century and the Weimar Republic, it was not until 1951 that co-determination by law was first introduced. The German trade unions at that time had only achieved the political power to establish legal rights to co-determination in the basic industries of coal and iron and steel. The system introduced in those two sectors remains the model of co-determination that the trade unions in Germany would like to see used in other industries. The law provided for parity of representation for workers and shareholders on the supervisory boards of firms in coal and iron and steel. Under its provisions trade unions and works councils nominate half the places on the company's supervisory board. The chair of the board is independent not from either the employee or shareholder side. The supervisory board has the power to appoint the administrative board, responsible for the day to day running of the enterprise. This includes the appointment of the company's labour director who sits on the administrative board. He cannot be appointed against the vote of the employee representatives.

Over the next twenty-five years the trade unions tried to extend the co-determination system from coal and iron and steel to other sectors but they did so without success. Already in 1952 a further law was introduced that made provision for employee representation at board level. However they were to account for only up to a third of members of a company's supervisory board. This law still applies today in all enterprises which employ between 500 and 2000 workers. The legal provisions involved under the 1952 Act are more designed to advance the information and consultation rights of the works council rather than to establish co-determination. The employee representatives may only come from employees in the firm. Trade unions remain dissatisfied with this form of workers` co-determination.

The real advance in the expansion of co-determination took place in 1976 under the Social Democratic/Liberal coalition government. The 1976 Act extended the principle of parity in employee representation to the supervisory boards of all private firms that employed 2,000 or more workers across all industries and services. But compared with the provisions of parity within the 1951 Act it was a much weaker form of co-determination.

Under its provisions, the chair of the company's supervisory board has the casting vote and must be a shareholder representative. Moreover, one place among the worker representatives must be reserved for the representative of the firm's executives. The employee representatives on the supervisory board do not have a vote in the appointment of the labour director.

The exact size of representation on the supervisory board is set out in the law. It must consist of 12 members in firms employing between 2,000 and 10,000 workers. Of the six employee representatives, four must come from among the workers in the enterprise and the other two from trade unions.

The employers lodged a complaint against the new law before the German Constitutional Court. They argued that such an extension in co-determination rights imposed a restriction on the firm's ownership rights. But the Constitutional Court rejected their arguments twice and judged that the Law was not a breach of the country's constitution.

According to a 1998 survey carried out by a commission on co-determination and corporate governance established by the Bertelsmann Foundation together with the Hans Böckler Foundation an estimated 700 companies are covered from one of the two kinds of company co-determination with equal representation on supervisory boards. In 1998 around 24.5 per cent of workers employed in the country's private sector were involved in the system. In addition, a further 15 per cent of workers were believed to be employed in private companies which had works councils but no co-determination at board level. But the most important finding in 1998 was that as many as 60.5 per cent of workers employed in private firms had neither works councils nor employee board representation.

But the practice of co-determination in Germany does not reflect a single and uniform model of employee representation. Indeed, the evolution of the system has always been in line with the uneven development of companies in highly competitive product and consumer markets both within Germany and internationally. In recent years co-determination has become much more important as the institutional focus for work reorganisation and modernisation at plant level and less as the national or sector-wide recognition of the power of organised labour. It is the intricate linkage between employee representation at supervisory board level in the company and the activities of the company's works council that provides the corporate dynamic for necessary change. In short, the modified laws of the 1970s have ensured the social integration of the German company.

German employers used to be strong opponents of the principles of co-determination for a long time but nowadays they recognise the practical advantages it provides them with in helping them to carry through their corporate strategies with the active consent and cooperation of their employees.
The introduction of the European Company Statute provides German firms with an opportunity to modernise and reform their organisations beyond national borders. However, this will not mean the export of the German system elsewhere in the European Union. Nor will it mean its destruction by the introduction into Germany of less advanced systems from other European countries.

Greece

Greece has had no tradition of board-level representation for employees in their companies. Historically the country's industrial relations system was characterised by adversarial attitudes between capital and labour while governments were not interested in encouraging the advance of worker participation in companies through the use of the law. Moreover, the Greek economy was dominated by small and medium-sized enterprises in the private sector and such firms displayed no interest in establishing forms of corporate governance that they believed were irrelevant to their business operations.
However, after 1981 when PASOK the Socialist party was elected into government, legislation was passed that provided for direct board-level representation for workers who were employed in state-controlled and public sector utility companies and in former private firms that were brought into state ownership. Under its provisions a labour supervisory council was established for each of the enterprises involved. This was made up of 27 members of which nine represented the employees, nine the government and the remaining nine came from other stakeholders such as local councils, technical and economic chambers and various public bodies.
The law was modernised in 1996 to establish a more flexible form of boardroom representation. Under this reform company employees were entitled to two elected representatives on the boards of the state-owned companies. These worker directors are elected through a general ballot. Only employees are eligible. The employee board members have the same rights and duties as the other board members.
However, in the late 1990s Greece started to move parts of its public sector into private ownership, mainly through the development of joint private-public enterprises. These developments have inevitably undermined the board-level representation of workers that was always confined to the public sector. Such worker participation is now confined to those enterprises that are still under the majority control of the state. These are e. g. the companies that own the electricity system and the postal services and the national bank.
But the country's industrial structure of small firms and a substantial number of self-employed workers has ensured that even works councils, enterprise unions and other forms of employee representation below company board level remain under-developed.

Ireland

The system of corporate governance in Ireland is very similar to that of the United Kingdom. Its private sector companies operate with a single tier board structure and they are concerned exclusively to meet the interests of shareholders. There has been no tradition of employee representation at company board level. Nor are works councils part of the Irish industrial relations system in the private sector of the economy.
But the picture is different in the public sector. In 1977 the Worker Participation (State Enterprises) Act law was passed. This gave employees in seven state-sponsored commercial companies the right to elect up to a third of the members of their boards for periods of three years. Only employees of the company concerned are eligible. It was made clear that the work participation structure envisaged had to be based on existing trade union structures. But at the same time it was not envisaged there would be any move away from the single board system of corporate governance.
A review of the legislation ten years later led to the introduction of a further measure in 1988. This provided for the creation of sub-board consultative arrangements in

a wider number of state agencies and companies. The new law was highly flexible in what form the proposed consultation mechanisms ought to take. But it did set out some basic provisions of their functions.

Trade unions, staff associations or other designated bodies, recognised for collective bargaining purposes, were given the exclusive right to nominate candidates for election as worker directors. All employees, including those who are working part-time, are entitled to vote in the election of these board-level representatives. Once elected the worker directors have the same rights and duties on the board as ordinary company directors, who are generally appointed by the government.

However, the government was reluctant to extend or impose participation legislation onto Ireland's private sector if it proved impossible to stimulate such a development through encouragement and the negotiation of partnership arrangements.

There are now an estimated 54 employee representatives on over 20 state-controlled boards in Ireland. A few of the former state companies, which have been privatised, continue to have worker directors still sitting on their boards.

Initially, managers in the state-owned enterprises were hostile and suspicious at the creation of worker directors, who were often excluded from key decision-making and important company sub-committees such as finance. For their part, many worker directors felt uncomfortable in dealing with financial issues and called for more access to training. Originally there was some concern that worker directors could pose a challenge to existing collective bargaining and industrial relations structures. But with their sole right to nominate representatives to the board, the trade unions have been able to maintain a dominant role in the process.

The future of worker directors in Ireland's state enterprises is now in some doubt. The privatisation of state assets has brought the whole system of employee board-level representation into question. As many as 4 out of the 11 original companies covered by the legislation have now moved into the private sector. As a result they have lost their worker representation system.

But a survey of worker directors in Ireland carried out in 2002 found that as many as 96 per cent of respondents said they had a positive experience as worker directors. They believed their role gave them greater insights into the operations of the companies they work for. Over three quarters said the system had helped to improve industrial relations while 62 per cent added that it had helped in the development of the partnership approach in the company. On the other hand respondents were split half and half in their opinion as to whether they were 'only tolerated' or 'fully accepted' by management.

Italy

The wide gap between rhetoric and reality on the question of worker participation at company board level is never more pronounced than it is in Italy. According to article 46 of the country's 1949 constitution it is recognised that employees have the right to take part in 'the management of enterprises with the resources and within the limits laid down by the law.' But that provision has not led to any such arrangements coming into existence in Italian firms in over half a century outside the cooperative sector.

Indeed, the law plays only a limited role in Italy on the issue of employee representation at boardroom level. The workers committees and other active shop-floor bodies were established through the negotiated process of collective bargaining and multi-union agreements with employers and not by the legislative route. Employer hostility or indifference on the one hand and conflicts between the unions on the other has ensured a very limited development of worker directors on company boards.

It was only in the early 1970s that the first legal rights to information and consultation were introduced and then only in the face of strong resistance from the companies. They made up only a small part of the much wider worker offensive that developed after the country's so-called hot autumn in 1969.

It is true that the Italian government tried to interest trade unions and employer associations in developing a system of co-determination at board level on the model of West Germany. But this failed to make any progress. The adversarial approach to industrial relations was preferred to any attempt at the creation of industrial democracy. Indeed, the tradition of conflict and confrontation in Italy has ensured little advance for notions of employee representation on company boards. There are some voluntary participation systems in some firms such as the airline Alitalia and Zanussi, the white goods firm that is part of the Swedish-owned Electrolux, but these are very much the exception. In some public sector enterprises such as the postal services and ENI state holding company worker representatives were elected on to their respective management committees.

However, the reform of the public services and the privatisation drive of the 1990s in Italy have undermined these developments. The trade unions, which had already been sceptical of such participation, came to the conclusion that the presence of worker representatives on management boards in state-owned companies being moved to the private sector or undergoing restructuring was quite ineffective in influencing what happened.

It seems unlikely that any progress can be expected under the present centre-right Italian government. The country's employer association has already expressed its opposition to the employee participation provisions contained in the European Company Statute. However, an advance may be coming in information and consultation rights for employees in small companies.

But on the other hand, trade unions appear to be changing their traditionally negative attitude to worker representation at company board level as they debate the introduction of the European Company Statute. It is true that the trade unions adopted a more cooperative approach to tripartite agreements with government and employers in the early 1990s. Moreover, Italy's three main trade union federations are in agreement on developing a wide bargaining agreement that would include progress on the implementation of the new measure on employee representation at board level in European Companies. On the other hand, the country's leading employer association – Confindustria – remains sceptical about any moves that provide for the direct representation of a company's employees on to its board at national or European level.

Luxembourg

Luxembourg's system of industrial relations is close in its form to that of France but it is based on a much more conciliatory approach. The Duchy has a mixed system of employee representation at company board level, provided for under a law passed in 1974. It covers both private enterprises that employ 1,000 or more workers who have been with the firm for over three years and all other companies where the state holds at least 25 per cent of the capital or where the company has been given a state concession in its main field of activity.

In the large private firms employee representation must account for a third of the board of directors in a unitary board. In the public sector where the state holds at least a quarter of the capital one employee is elected to the administrative board for every 100 workers employed. There must be a minimum of three employee representatives but no more than a third of the board can come from the workforce. White and blue collar employee directors must be selected separately and in proportion to the number employed in each group in the company. These directors must be appointed from among the company's employees who are working in the company for not less than two years. But the system is different in the iron and steel industry. In that sector the most representative national trade unions are entitled to directly appoint three directors but they must not be employed by the company.

The worker directors have the same rights and obligations as their fellow directors and their length of tenure remains the same as well. However, they may find have their representation revoked by employees or in the case of the iron and steel industry by trade unions. Workers directors are not allowed to be members of more than two company boards at the same time.

Luxembourg, like most European countries, also has a well-developed system of enterprise employee committees in establishments employing 15 or more workers.

The Netherlands

The Dutch system of employee representation at company board level is both unusual and complex. Indeed, its critics argue that it does not amount to direct worker participation in corporate decision-making at all. The Netherlands after 1945 developed a fairly comprehensive works council structure in companies and this remains important in the dissemination of information and consultation.

Employee representation on company boards remains under-developed in the Netherlands and its existence is closely linked to the existing works council system. The legislation covers both public and private companies that employ a minimum of 100 employees and have capital – including reserves – of at least 13m€. These undertakings are required by the 1971 Law to form a supervisory board of at least three people. The Dutch system of worker participation at board level differs significantly from the systems in operation elsewhere in other European countries. There is no legal provision for the directly election or appointment of employee representatives on a company's supervisory board. People who may have the confidence of the workforce can be recommended by the company's work council to sit as directors but the final decision of who should serve lies in the hands of the company's supervisory board. Moreover, such members are not seen as employee representatives. They are required to take an interest in the affairs of the company as a whole and not be beholden to the workforce. However, both the works council and the annual shareholders meeting have a veto power in the event of a conflict of who should be appointed.

One crucial point is, that the Dutch system applies only to companies which have the majority of their employees in the Netherlands. A restricted system applies to international groups a majority of whose employees work outside the Netherlands, irrespective of whether their headquarters are in the Netherlands or elsewhere. The legal obligations on workers' participation do not apply to the international holding company, but only to the holding company of the companies with their

seat in the Netherlands (called sub-holding) and in a weaker form.
A survey carried out in the Netherlands in 1994 found that the works councils in less than half the firms had recommended one or more members to the supervisory board. As neither worker nor trade union representatives can be elected, the board members are mainly drawn from academic life or the political world who are mindful of employee interests. The co-option process for membership of the supervisory board is administered by the annual shareholders meeting as well as the works council. The term of office cannot be longer than four years although a member can be re-elected.
The powers of the company's supervisory board are substantial. Its members have legal powers to approve any increase or reduction in the company's share capital. They need to approve mergers, acquisitions and investments of a value of at least a quarter of the equity capital. They are also required to approve any major change in working conditions in the company and in collective dismissals.
The supervisory board can not only appoint and dismiss managing directors and members of the company's administrative board but they enjoy certain authorisation rights on larger levels of investment. The board is also involved in the preparation of the company's annual accounts.
At the same time, the works council in the company continues to exercise considerable influence over the supervisory board. Not only does it recommend candidates from the employees for membership of the supervisory board, their opinion must be requested on the planned appointment or dismissal of a board member.

Portugal

Corporate governance in Portugal is based on the model of a single company board which is responsible to shareholders. There is no law on the country's statute book that provides for employee representation at board level in privately owned companies. In theory the workers commission, the Portuguese equivalent of a works council, may agree as a social partner to negotiate representation on a company board. But in practice this has never happened.
Employee representation on the boards of wholly state-owned enterprises and other public entities is guaranteed, however, under the country's democratic 1976 constitution that followed the end of Fascist rule in Portugal. This was followed by the introduction of specific legislation that was passed in 1979 and 1984 and gave employees the right to elect one representative to the Board of Directors and the Council of Auditors.
Worker directors must be elected by a majority of employees in the company and all employees have the right to participate in the vote. The candidates must be employed by the firm in question. They must be nominated by the workers commission (a form of works council) and/or by 10 per cent of the labour force or 100 workers.
The worker directors hold their positions for three years but there is nothing to prevent them from standing again for re-election. Their rights and duties as board members are exactly the same as those of all the other company directors.
However, this legislation on employee board-level representation in the public sector has never been implemented. As a result of this very few workers directors have been installed in reality.
In the early years of democracy in the 1970s the Portuguese government carried through a vast programme of nationalisation of the country's industrial base. But since 1989 many of the public corporations have been moved into the private sector by successive governments. As a result in theory less than 2 per cent of the workforce in 2000 are now estimated to be actually covered by the laws requiring employee representation on the governing bodies of public enterprises.
Finally, in 1999 further legislation was passed that abolished the right for employee representatives to be elected to the boards of public-owned enterprises. As a result there is no comprehensive legal entitlement in Portugal any longer for employee company board representation.
What worker representation remains in the country's companies is mainly concentrated outside their boardrooms. In Portugal the system of works councils is

advanced in comparison with other systems in the European Union. The workers' commission remains the most important representative body in the workplace with the legal right to receive information about corporate strategy and planning, the company finances, the organisation of production and personnel management issues.

Management has to give the company's workers' commission prior notice before carrying out plant closures, any move to liquidate the company or to reduce the size of its labour force. Legislation in Portugal also now provides for the election of workplace-based trade union committees by employees which can become a central organisation within the company as a result.

The limited character of employee representation at company board level reflects the general outlook of the trade unions. They prefer to strengthen their role through the development of autonomous workplace institutions like the workers' commissions rather than by insisting on employee representation on company boards. There is no immediate prospect of any change of attitude at the national level. Indeed, the supporters of worker directors find themselves very much on the defensive as the current government seems keen to remove what employee board-level representation continues to survive in some companies.

Spain

Spain's system of employee representation in corporate governance has been shaped by the experiences of General Franco's authoritarian regime which ran the country between 1939 and 1976. Although a worker participation law was passed in 1962, it was widely criticised as 'pure propaganda'. The corporatist structures that dominated Spain's industrial relations tended to ensure that power and authority in the workplace remained exclusively in the hands of employers.

Certainly the promotion of trade union and individual worker rights were not part of the Franco workplace agenda although a rigid, corporatist system was imposed on employers and employees.

However Spain's 1978 democratic constitution that followed the end of the country's dictatorship makes it clear that the state is under an obligation 'to promote the participation of all citizens in economic life'. Two years later workers were guaranteed information and consultation rights, the right to participate in the management of the country's social services. At the same time they were also obligated to cooperate with employers in improving productivity.

Since 1995 firms employing more than 100 workers and smaller enterprises involved in dangerous activities have been required to establish health and safety committees with parity of representation between management and workers.

But no legal provision exists in Spain that requires a permanent presence of employees on company boards in the private sector. Nor are there any co-decision rights in the firm between employer and employees, except for the fixing of holiday periods. Any moves to worker representation in corporate governance have to be made through voluntary negotiation in collective bargaining.

However, in 1986 a national agreement was made between the government and the UGT trade union federation that provided for trade union representation in state-owned enterprises that each employ more than 1,000 workers. Under this agreement unions can participate in management either through holding minority representation at board level or through the creation of an information and control committee where management and unions hold equal representation. Workers through their unions also sit on the boards of Spain's saving banks. The two most representative trade unions, CCOO and UGT, are entitled to send one representative each to sit on the boards of the banks.

By contrast the private sector companies in Spain are firmly under the control of either shareholders or family owners. Trade union efforts to advance the cause of worker participation at board level in private firms failed to make much progress during the 1980s through collective bargaining. The works councils that exist in Spain have not been brought into the decision-making processes of companies either. Moreover, the degree of consultation in the privates sector remains limited. In 1999 as many as 88 per cent of companies did not discuss work related problems with their employees while 72 per cent failed to consult them on work organisation issues. It seems that the arrival of democracy in Spain has not made of an impact on the country's authoritarian corporate culture and practices.

In fact, the trade unions in Spain have found it difficult to overcome the legacy of the past. Without the establishment of a framework of legal rights to worker participation, they have struggled to develop permanent and robust systems of workplace participation through negotiation with employers. The absence of law has meant that genuine forms of worker participation have been vulnerable to high unemployment, neo-liberal policies to make labour more flexible and corporate strategies that seek to drive down labour costs. This has tended to make the Spanish unions defensive and passive in their attitude to the issues of boardroom worker representation.

Moreover, the widespread use of temporary employment contracts as well as the dominance of employment in fragmented and small firms in agriculture, retail, hotels and construction has not helped unions to develop a credible programme for worker participation. The dependence of corporations on financing through the banking system coupled with the persistence of an aggressive neo-liberal strategy by employers has added to the obstacles in developing systems of worker participation at board level. Unless the Spanish government legislates to make such representation compulsory on companies, it seems most unlikely the present authoritarian methods of corporate governance are going to change very dramatically.

On the other hand, there has been a wide-ranging debate in Spain on the need for company law reform, mainly aimed at improving the position of shareholders and institutional investors in particular and ensuring greater transparency in business activities. But this development suggests Spain is developing a neo-liberal approach towards the reform of corporate governance. The question of employee representation on company boards is hardly discussed or even mentioned.

This is causing particular problems for those parts of the state sector which are being moved into the hands of private owners. As a result of such privatisation Spain is experiencing a decline in what limited worker participation exists. As a result the trade unions are taking a renewed interest in a demand for a compulsory participation law. But in the present political climate this seems unlikely to make much progress.

Sweden

The democratisation of working life in Sweden has a long history that goes back to the inter-war years. Its development has always reflected the impressive growth of a strong and progressive trade union movement in alliance with Social Democratic governments that have ruled the country for all but nine years since 1932. The elaborate system of managed social corporatism that was developed in Sweden through the highly centralised organisations representing employers and trade unions has tended to emphasise the importance of voluntary collective bargaining without resort to the use of prescriptive legal rights imposed by the state.

It was not until 1973 and 1975 that legislation was passed that introduced company board representation for worker representatives. The shift away from voluntary negotiated agreements to the use of legislation marked an important change of direction in the industrial relations strategy of Sweden's trade union movement. It aroused considerable opposition from employers and it was only after 1982 that agreement was reached that began to put the legislation into action.

But from the beginning the new laws – one for co-determination and the other on board representation – provided employer associations and trade unions with considerable autonomy and flexibility in the way that employee representation at company board level should be designed. A great deal is left to the initiative and creativity of local officials and company managers. Indeed, the open-ended nature of the worker participation laws has produced a considerable diversity in the range of structures and procedures.

But the legislation was rewritten in 1987 as the Board Representation Act. The far-reaching measure is designed to provide employees with the opportunities for using their knowledge and influence in company activities. It covers not only limited-liability companies but also banks, mortgage institutions, insurance companies and economic associations who employ 25 or more workers. Employees in such enterprises are entitled to two representatives on the board of directors and one alternate for each member. But companies that employ an average of at least 1,000 employees in Sweden are also required to have three worker representatives on their board of directors. The most common size of the board in Swedish companies is seven members, two of whom are employee representatives.

Because all rights to co-determination, participation and negotiation at the workplace are distributed to the trade unions, which, by law, are responsible for the conclusion of collective agreements within the company, only the members of a trade union have the right to elect their representatives on the boards. The decision to appoint employees' board representatives is taken by a local trade union which is bound to the company by a collective agreement. If as many as 80 per cent of the employees covered by the collective agreement belong to the same trade union, that organisation can appoint all the employees' representatives. If this is not the case the two seats have to be shared among the most representative trade unions in the firm. In practice unions have little problem in reaching agreement on the appointment of employee representatives. But the law requires that those representatives are employees of the company concerned. It is very unusual for full-time trade union officials from outside the company to be appointed onto its board as employee representatives. Under the law an employee representative is allowed to serve a term that does not exceed four financial years. Only the body that has appointed the employee representatives can dismiss them.

The law makes it clear that the employee representatives on the company board do not participate in the treatment of issues that concern the collective bargaining agreement. Nor are they involved in industrial action or other matters where a union organisation at the workplace has a material interest which may conflict with the interests of the company.

Indeed, it is not an exaggeration to argue that the relative decline in the power and influence of Sweden's trade unions at the national level as social partners has been paralleled by a revitalisation of their organisations in the workplace.

The development of joint decision-making in Swedish companies is in tune with the country's tradition of collective bargaining and social partnership. Moreover, the legislation of the 1980s was developed in line with the voluntary and negotiated approach to workplace change. Research does not suggest employee representation on company boards has altered the power relationship between managers and employees but it has helped in ensuring active cooperation and consent to work modernisation.

United Kingdom

There is no legal requirement in the United Kingdom, either in legislation or a formalised code of practice, that the country should have a two tier structure for companies, including a supervisory board. All enterprises in the country are formed and managed for the explicit benefit of shareholders alone. Under existing company law the directors run the firm in the shareholders' interest. No formal position exists in law that entitles employee representatives to have seats on the company board. However, British companies are legally required to inform and consult employee representatives under European Union regulation although this falls far short of worker participation on company boards. A recognised union is entitled to prior information from an employer if it involves a company dismissing 20 or more workers within 90 days. It has a similar legal right in cases of health and safety and occupational pension schemes. But in its 2003 briefing document on the European Company Statute, the Department of Trade and Industry argues that it is quite lawful to establish such a company structure that involves direct employee representation under current legislation.

What limited law there is in UK concerns only the right of workers to information and consultation, and that is mainly limited to questioning which is directly related to employment, collective redundancies and transfers of undertakings from the public to the private sector. But even that practice is not widespread in the country. A 1998 survey of more than 3,000 workplaces found almost three out of every five of them had no worker representation existing at all and this was true of as many as 90 per cent of workplaces which lacked trade union membership.

Employee representation at board level is not the subject of major public discussion in Britain's trade unions at the moment. Their main focus for concern is the transposition of the European Union directive on information and consultation into UK law. The country's employers remain hostile to the concept and they opposed the European Company Statute on the grounds that it is incompatible with the culture of British enterprises. The British government continues to show little obvious enthusiasm for the concept either. Its discussions on the future of company law has paid little intention to whether or not employees should be able to enjoy rights comparable to those of shareholders. In a white paper on modernising company law published in 2002 the government went no further than suggesting firms should recognise that they had a need to foster relationships with their employees, customers and suppliers, as the circumstances required.

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	LEGISLATION ON BOARD-LEVEL REPRESENTATION	CRITERIA	NUMBER OF WORKERS' REPRESENTATIVES ON THE COMPANY'S BOARD	NOMINATION OF CANDIDATES	VOTE BY EMPLOYEES / APPOINTMENT	ELIGIBILITY CRITERIA FOR WORKERS' REPS ON THE BOARDS	STRUCTURE OF RELEVANT COMPANIES
AUSTRIA	yes	a) JSC b) limited liability C > 300	1/3 of SVB	appointment by WC		only members of WC (having active voting rights, i.e. only E)	D
BELGIUM	no						
DANMARK	yes	C > 35 E	1/3 of MB (at least 2 members)	no legal procedure	vote	only E	M
FINLAND	yes	C > 150 E	agreement between employer and personnel groups on number of representatives and choice of board (employer may decide between SVB, MB or management groups)	by personnel groups in WC procedure	vote if no agreement between personnel groups	only E	M /D (SVB optional if stock capital > 80.000)
FRANCE	yes	a) state-owned C (> 50% of capital, and subsidiaries) b) privatised C c) private JSC (voluntary) d) representation of WC	a) 200-1000 E: 3 members of SVB/MB >1000 E: 1/3 of SVB/MB b) 2 members if SVB/MB < 15 members; if >15: 3 members c) max. 1/3 of SVB/MB d) 2 members (only advisory say)	a) E b) E c) E d) appointment by WC	a) vote b) vote c) Vote	a) only E; b) only E; c) only E (and no other mandate) d) WC member	M/D
GERMANY	yes	a) C 500-2000 E b) C > 2000 E c) C in the iron, coal and steel industry	a) 1/3 of SVB b) 1/2 of SVB (chairman is appointed by shareholders) c) 1/2 of SVB (chairman is a "neutral external person") + de facto: 1 member of MB (blocking minority in appointment of labour director)	a) WC, E (10% or 100) b) E (20%), TU have the right to nominate 2-3 candidates c) some by WC, some by TU	a) vote b) direct vote or vote by delegates assembly (if more than 8000 E) c) appointment by General Meeting of shareholders	a) only E (for not less than 1 year) b) only E (for not less than 1 year) / TU nomination for the TU seats c) only E (for not less than 1 year)/ TU nomination for the TU seats / extra members: neither E nor TU officials	D

Legend:

TU = (company) trade union
WC = works council / elected worker representatives
E = employees (of the company)

C = companies
JSC = joint stock companies
SVB = supervisory board

MB = management board
M = monistic model (board of directors)
D = dualistic model (management board and supervisory board)

OVERVIEW: BOARD-LEVEL REPRESENTATION IN THE EU-15 - BY NORBERT KLUGE AND MICHAEL STOLLT, 2004

SEEurope www.seeurope-network.org	LEGISLATION ON BOARD-LEVEL REPRESENTATION	CRITERIA	NUMBER OF WORKERS' REPRESENTATIVES ON THE COMPANY'S BOARD	NOMINATION OF CANDIDATES	VOTE BY EMPLOYEES / APPOINTMENT	ELIGIBILITY CRITERIA FOR WORKERS' REPS ON THE BOARDS	STRUCTURE OF RELEVANT COMPANIES
GREECE	yes	state-owned C	2-3 members of MB (right to withdraw this right if < 50% public capital)	by law: E de facto: TU fractions	vote (appointment by responsible minister)	only E	M
IRELAND	yes	20 state-owned C and agencies, some privatised C	mostly 1/3 of MB but ranging from 1 to 5 directors	TU, bodies reco-gnised for collec-tive bargaining	vote	only E (for not less than three years)	M
ITALY	no						
LUXEMBOURG	yes	a) C > 1000 E b) state-owned C (min. 25% of capital); C with a state con-cession	a) 1/3 of MB b) 1 director per 100 E (max. 1/3 of board)	appointment by staff representatives iron and steel industry: TU have the right to directly appoint three directors		only E	M
THE NETHERLANDS	yes	C where equity capital > 13 Mio. € + existence of a WC + > 100 E incl. subsidiaries (some exceptions)	WC have the right to recommend and oppose appointment of SVB members				D
PORTUGAL	yes	state-owned C (only if 100% public capital) but: law is (almost) not implemented!	1 member of MB (but: law is not implemented) 1 member of Council of Auditors (implemented only in some C)	[WC/ E (10% or 100)]	[vote]	[only E]	M
SPAIN	yes	26 state-owned C, 46 saving banks	2 members	the two most representative TU can designate one representative each			M
SWEDEN	yes	most C > 25 E	a) < 1000 E: 2 members b) > 1000 E: 3 members (but never majority) of MB	appointment by TU (with which collective agreement concluded)		only E	M
UK	no						

Legend:
TU = (company) trade union
WC = works council / elected worker representatives
E = employees (of the company)
C = companies
JSC = joint stock companies
SVB = supervisory board
MB = management board
M = monistic model (board of directors)
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WORKERS' REPRESENTATION AT BOARD LEVEL IN THE NEW EU MEMBER STATES

WORKERS' REPRESENTATION AT BOARD LEVEL IN THE NEW EU MEMBER STATES

The biggest enlargement in the history of the European Community will, in May 2004, bring into the EU the central and eastern European countries (CEEC) of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, along with Malta and Cyprus. The social dimension of the Community will thus undergo a change too, with new facets being added to the existing economic, political and socio-cultural diversity of Europe. EU law will apply in the new member states as from the date of accession. The new countries have been preparing for the countdown to membership ever since they were first recognised as candidates for accession at the Copenhagen summit in 1993: they have since had to incorporate the provisions of Community law, the so-called *acquis communautaire*, into national legislation.
The three most important EU directives on worker participation must likewise be transposed into national law:

- the directive on the establishment of European Works Councils, by the date of accession;
- the directive on employee involvement in the European Company (SE directive), by October 2004;
- the directive on information and consultation of employees, by March 2005.

The SE directive opens up new opportunities for workers to influence decision-making in public limited-liability companies constituted at European level (SEs), marking a new phase of European social integration for all economic players. In this way, companies can and should be obliged to become more socially responsible than hitherto. This presupposes that employee representatives will reach a common European understanding of how to exercise their mandates. The compulsory worker involvement imposed by EU legislation will bring together people of very different backgrounds. The experiences and perceptions of employee representatives from the new EU countries are very welcome as a means of enriching co-determination in the European Company. It is therefore all the more important for us to ascertain at an early stage what are the current legal preconditions and experience in the new EU member states; otherwise our picture of the existing systems of worker participation in the EU countries would be incomplete. It was for this reason that we analysed the findings of a questionnaire drawn up by the European Trade Union Institute, which was completed by experts from the new EU countries in autumn 2003 (see list at the end of the article).

Representation of workers at board level - legal provisions

Just as in the case of the current 15 EU member states, a comparison of the new EU countries reveals more differences than similarities. Although legislation has only begun to be passed since 1990, these countries approached the establishment of national systems of industrial relations and worker participation in varying ways. Therefore we cannot speak of a uniform model in the new EU countries. Most of them do, however, have legislative provisions on board-level representation of employees (BLR); this legislation is moreover independent of that country's general rules on company structures (dualistic or monistic)[1].

1 The monistic model means that there is only a board of directors/administrative board; dualistic means the existence of a management board and a supervisory board.

In **Slovakia**, **Slovenia**, the **Czech Republic** and **Hungary**, legal provision is made for BLR in both state and private sector companies. The criteria as to which companies are affected by these laws are however very different. The key criterion in **Hungary** is the number of employees: if this lies above 200 on average, there is an entitlement to have worker representatives on the supervisory board. The regulations in the **Czech Republic** encompass on the one hand state enterprises (whatever their size) and, on the other, joint stock companies with over 50 employees. Similar conditions also apply in the neighbouring country of **Slovakia**, although it does not have to be the supervisory board of a joint stock company. A supervisory board is mandatory in all companies with basic capital of more than one million SKK (Slovakian crowns; roughly equivalent to €24,500). In **Slovenia**, lastly, BLR is optional in the case of a joint stock company which has a supervisory board. The *obligation* to establish one is in turn dependent on the fulfilment of various criteria: it applies in particular if the company has more than 500 employees, if its basic capital exceeds 410,000,000 SIT (Slovenian tolars; approximately €1.7 million), if the shares are traded on the stock exchange, or if there are more than 100 shareholders.

In **Poland** several laws co-exist. The "Act on workers' self-management" of 1981 still applies to state-owned companies[2]. In view of ongoing privatisation the Polish legislator has stipulated that, when a company is converted, BLR must be introduced in that company. This rule applies even when the state's holdings fall below 50%. Apart from these cases, there is no general legal obligation to ensure participation at board level in private firms.

Malta and **Cyprus**, similarly, have no legal provisions on BLR in the private sector. Maltese legislation does nevertheless stipulate that worker representatives should sit on the boards of state enterprises. The same practice is to be found in **Cyprus**, albeit without a legal basis, at least in certain state enterprises (or ones with state holdings): in this case, the government has voluntarily included a number of high-ranking trade union officials in the management team. They mostly come from the national umbrella organisation and, when exercising their mandates, apparently do not see themselves first and foremost as representing the interests of employees.

In **Estonia**, **Latvia** and **Lithuania** [3] , there is as yet no legal basis for involving worker representatives in the executive bodies of companies. In this respect they constitute exceptions among the new EU member states.

How many worker representatives does the law provide for at board level?

In countries that have BLR, the number of worker representatives is determined by the overall size of the board. In **Hungary**, the **Czech Republic** and **Slovakia**, workers may make up 1/3 of the board, while in state-owned Slovakian companies half of the members are appointed by the workforce. **Slovenia** allows for anything between a minimum of 1/3 and a maximum of half of the posts (laid down in the company's articles of incorporation). In the latter case, however, the chairman - who is always appointed by the shareholders - holds the casting vote. The statutory level of participation in **Poland** is 2/5; this proportion may however be altered if the state relinquishes the majority of its holdings (the workforce then chooses between two and four members, depending on the size of the board).

In **Malta**'s state-owned enterprises there is only ever one - elected - staff representative sitting on the board.

Both **Poland** and **Slovenia** have laws stipulating that, in addition to the representatives on the supervisory board, companies in excess of a certain size must second a full-time workforce representative to the management board. Employees in Slovenian firms with over 500 staff possess this right, as do workers in privatised Polish enterprises of the same size. In **Slovenia** it is the prerogative of the works council to nominate this *labour director*, who is then formerly appointed by the shareholders' assembly.

How does one become a worker representative at board level?

The overall structure of the system of industrial relations is what determines the recruitment of worker representatives at board level, irrespective of the degree of acceptance of a given system by the workforce as a whole.

Hungary and **Slovenia** were the only countries to introduce at an early stage

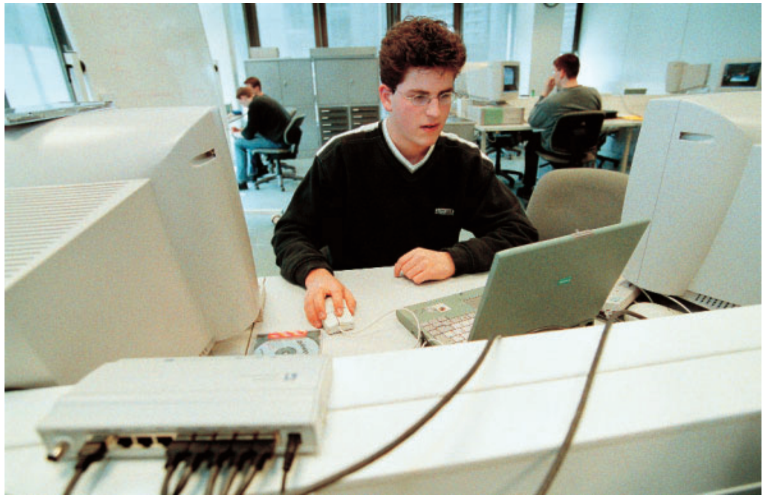
2 The number of such companies has been falling steadily as a result of increasing privatisation: in 2001 they numbered about 2,050 in comparison with approx. 8,450 in 1990 (Towalski in eironline 27.8.2002, Poland: Non-union forms of employee representation, http://www.eiro.eurofound.eu.int)

3 In Lithuania there are a few instances of state-owned companies in which one or two workforce representatives participate in decision-making by the executive bodies.

(1993 and 1992 respectively) a dual form of interest representation, with a works council elected by the entire workforce as well as representation by a workplace trade union organisation. In both of these countries it is the legal duty of the works council to appoint the worker representatives on the board, although in **Hungary** the workplace trade unions must first be consulted.
Employee representatives in the **other CEEC** with BLR are directly elected. These are for the most part countries where trade unions have sole responsibility for representing the interests of the workforce. Here, not only the trade unions but also the employees themselves have the right to put forward candidates. Only in the **Czech Republic** is there no legislation in this area at present.
In certain countries, such as **Slovenia**, **Hungary** and the **Czech Republic** (in private enterprises), only employees of the company may sit on the board. External representatives, e.g. from the trade unions, cannot become board members in these countries. Only in **Slovakia** are members of trade unions represented in the workplace allowed to allocate one of the seats on the supervisory board as they see fit (only in the state-owned companies).

Legislative provisions and social reality

Looking ahead to negotiations on worker participation in the SE, the legal situation does at least provide a point of reference from which to begin when seeking to agree on a common position and to find negotiated solutions with the employers. Nevertheless, the gap between legislation and social reality must not be ignored: the existence of basic legal provisions does not automatically imply that the laws are being actively implemented on the ground.
Even though it is not a totally unknown aspect of industrial relations in the new EU member states, experience of BLR is comparatively recent and confined solely to certain types of company and certain groups of employees. Very different sets of workers are covered by interest representation at board level according to the laws in different countries. If, as in Poland's case, only privatised enterprises or, as in that of Slovenia, only the very largest ones are compelled to ensure worker participation at board level, the range of experience and the significance of representation at this level remains extremely limited. Another reason for this lies in the very small size of most companies in the CEEC.
As well as the legal conditions, the competence of the company body as a whole plays an important role in the success with which mandates are exercised. What is more, in legal terms employee representatives have the same rights and duties as the other board members; we can however conclude nothing from this about their real influence.
Outside of the - shrinking numbers of - state-owned enterprises, observers also note an aversion on the part of industry to the exercising of influence by workers in this manner, since it is deemed to conflict with the recently introduced and warmly welcomed principles of the market economy.



Yet this combination of adverse conditions, often quite understandable in view of the historical background, is no justification for depriving workers and trade unions of their legitimate rights, simply by ignoring them. The Slovakian trade union confederation, for instance, estimates that some 25% of companies are breaking the law, in that the number of employees elected to the supervisory board is below the statutory level.
Similarly in Slovenia, the law on participation has not been implemented in full by any stretch of the imagination: fewer than half of the companies concerned have actually appointed a labour director. In this case the structure of the legal basis is probably preventing a more effective use of the possibilities of worker representation. The law specifies that works councils must put forward board-level representatives, whereas the establishment of works councils themselves is not mandatory

but contingent on an initiative taken by employees in a company. The consequence is that where there is no works council, nor is there any board-level representation - on either the supervisory board or the management board - despite the enabling legislation.
It is surely unsatisfactory that the very existence and the commitment of a works council or of workplace trade union representatives ultimately determine whether or not the right to participation exists and, if so, at what level. There is a likelihood, and a hope, that the introduction of cross-border standards for participation in SEs will improve the opportunities for workers to participate and will stabilise employee/employer relations overall. BLR of the workforce has the potential to compensate at least in part for the current deficiencies in interest representation which exist in almost all the central and eastern European countries, both at company level (workplace trade unions/works councils) and at sectoral level (binding effect of collective agreements).
Whether or not this potential is exploited depends largely on workers' attitudes to this level of interest representation: it is often necessary to overcome their long-standing scepticism concerning bodies that uphold employees' rights. Above all, however, it is up to the trade unions to seize on these new opportunities and use them to strengthen or overhaul their own structures, and not merely to regard them as competing with their own workplace organisations.

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OVERVIEW: BOARD-LEVEL REPRESENTATION IN THE NEW EU MEMBER STATES - BY NORBERT KLUGE AND MICHAEL STOLLT, 2004

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CYPRUS	no						
CZECH REPUBLIC	yes	JSC > 50E & state-owned C	1/3 of SVB	(no legislation at present)	vote	private C: only E state-owned C: no restrictions	D
ESTONIA	no						
HUNGARY	yes	C > 200 E	1/3 of SVB	WC (duty to ask opinion of TU)		only E	D
LATVIA	no						
LITHUANIA	no						
MALTA	yes	state-owned C	1 member of board of directors	WC	vote	no restrictions	M
POLAND	yes	privatised C (former state-owned C) [additionally, state-owned C are still governed by 1981 Act on workers' self management]	a) if state is owner of C (>50%): 2/5 of SVB b) if C is only partly owned (<50%) by state: 2-4 members of SVB (depending on SVB's size) in privatised C > 500 E: 1 member of MB	E, TU	vote	no restrictions	D
SLOVAKIA	yes	state-owned C & C with a SVB >50 E	private C: 1/3 of SVB state-owned C: 1/2 of SVB	E (10%), TU in state-owned C: 1 board member directly appointed by TU	vote	no restrictions	D
SLOVENIA	yes	JSC with a SVB (obligatory e.g. if >500 E)	1/3 - 1/2 of SVB (defined in statutes of C) + in C > 500 E: 1 member of MB	SVB members: appointment by WC MB member: proposal by WC (appointment by shareholders)		only E	D

Legend:
TU = company trade union
WC = works council / elected worker representatives
E = employees (of the company)
C = companies
JSC = joint stock companies
SVB = supervisory board
MB = management board
M = monistic model (board of directors)
D = dualistic model (management board and supervisory board)

ANNEX

COUNTRY EXPERTS

Project "Prospects for participation and co-determination under the European Company Statute – An overview"
The detailed country reports on board-level representation in the 15 EU member states can be downloaded from www.seeurope-network.org

Austria	Wolfgang Greif	International Secretary, Gewerkschaft der Privatangestellten (Union of Salaried Private Sector Employees)
Belgium	Luc Triangle	Centrale Chrétienne des Métallurgistes de Belgique (CCMB) / Chairman of the Select Working Party of the 'Company Policy Committee' of the EMF (European Metalworkers Federation)
Denmark	Peter Dragsbæk	Trade union official, CO-industri (Central Organisation of Industrial Employees in Denmark)
Finland	Jari Hellsten	Legal adviser SAK (Central Organisation of Finnish Trade Unions)
France	Patrick Roturier	Syndex, Paris
Germany	Roland Köstler	Head of economic law division of the Hans Böckler Stiftung, Düsseldorf (Foundation of the German Trade Union Confederation)
Greece	Christos A. Ioannou	CIRN (Centre of Industrial Relations and Negotiations), Athens University of Economics and Business / OMED (Organisation for Mediation and Arbitration), Athens
Ireland	Kevin O'Kelly	Researcher at University of Limerick
	Pat Compton	Irish Worker Directors' Group
Italy	Dario Ilossi	Expert at SindNova / FEMCA CISL, International Department
Luxembourg	Marc Feyereisen	Magistrat à la Cour Administrative, Luxembourg
The Netherlands	Joan Bloemarts	Labour and company law adviser FNV (Dutch Trade Union Confederation)
Portugal	Reinhard Naumann	Researcher at CIES/ISCTE (Centro de Investigação e Estudos de Sociologia, Lisbon)
Spain	Armando Fernández Steinko	Researcher at Universidad Complutense de Madrid
Sweden	Roger Nilsson	Trade union official, Svenska Metall
UK	Lionel Fulton	Researcher at Labour Research Department, London

COUNCIL REGULATION (EC) NO 2157/2001 OF 8 OCTOBER 2001 ON THE STATUTE FOR A EUROPEAN COMPANY (SE)

OFFICIAL JOURNAL L 294 , 10/11/2001 P. 0001 - 0021

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the Economic and Social Committee[3],

Whereas:

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

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

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

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

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

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

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

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

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

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

1 OJ C 263, 16.10.1989, p. 41 and OJ C 176, 8.7.1991, p. 1.
2 Opinion of 4 September 2001 (not yet published in the Official Journal).
3 OJ C 124, 21.5.1990, p. 34.

(11) In the same context it should be possible for a public limited-liability company with a registered office and head office within the Community to transform itself into an SE without going into liquidation, provided it has a subsidiary in a Member State other than that of its registered office.
(12) National provisions applying to public limited-liability companies that offer their securities to the public and to securities transactions should also apply where an SE is formed by means of an offer of securities to the public and to SEs wishing to utilise such financial instruments.
(13) The SE itself must take the form of a company with share capital, that being the form most suited, in terms of both financing and management, to the needs of a company carrying on business on a European scale. In order to ensure that such companies are of reasonable size, a minimum amount of capital should be set so that they have sufficient assets without making it difficult for small and medium-sized undertakings to form SEs.
(14) An SE must be efficiently managed and properly supervised. It must be borne in mind that there are at present in the Community two different systems for the administration of public limited-liability companies. Although an SE should be allowed to choose between the two systems, the respective responsibilities of those responsible for management and those responsible for supervision should be clearly defined.
(15) Under the rules and general principles of private international law, where one undertaking controls another governed by a different legal system, its ensuing rights and obligations as regards the protection of minority shareholders and third parties are governed by the law governing the controlled undertaking, without prejudice to the obligations imposed on the controlling undertaking by its own law, for example the requirement to prepare consolidated accounts.
(16) Without prejudice to the consequences of any subsequent coordination of the laws of the Member States, specific rules for SEs are not at present required in this field. The rules and general principles of private international law should therefore be applied both where an SE exercises control and where it is the controlled company.
(17) The rule thus applicable where an SE is controlled by another undertaking should be specified, and for this purpose reference should be made to the law governing public limited-liability companies in the Member State in which the SE has its registered office.
(18) Each Member State must be required to apply the sanctions applicable to public limited-liability companies governed by its law in respect of infringements of this Regulation.
(19) The rules on the involvement of employees in the European company are laid down in Directive 2001/86/EC[4], and those provisions thus form an indissociable complement to this Regulation and must be applied concomitantly.
(20) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.
(21) Directive 2001/86/EC is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their SE. Other social and labour legislation questions, in particular the right of employees to information and consultation as regulated in the Member States, are governed by the national provisions applicable, under the same conditions, to public limited-liability companies.
(22) The entry into force of this Regulation must be deferred so that each Member State may incorporate into its national law the provisions of Directive 2001/86/EC and set up in advance the necessary machinery for the formation and operation of SEs with registered offices within its territory, so that the Regulation and the Directive may be applied concomitantly.
(23) A company the head office of which is not in the Community should be allowed to participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy according to the principles established in the 1962 General Programme for the abolition of restrictions on freedom of establishment. Such a link exists in particular if a company has an establishment in that Member State and conducts operations therefrom.
(24) The SE should be enabled to transfer its registered office to another Member State. Adequate protection of the interests of minority shareholders who oppose the transfer, of creditors and of holders of other rights should be proportionate. Such transfer should not affect the rights originating before the transfer.
(25) This Regulation is without prejudice to any provision which may be inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention, relating to the rules of jurisdiction applicable in the case of transfer of the registered offices of a public limited-liability company from one Member State to another.
(26) Activities by financial institutions are regulated by specific directives and the national law implementing those directives and additional national rules regulating those activities apply in full to an SE.
(27) In view of the specific Community character of an SE, the "real seat" arrangement adopted by this Regulation in respect of SEs is without prejudice to Member States' laws and does not pre-empt any choices to be made for other Community texts on company law.
(28) The Treaty does not provide, for the adoption of this Regulation, powers of action other than those of Article 308 thereof.
(29) Since the objectives of the intended action, as outlined above, cannot be adequately attained by the Member States in as much as a European public limited-liability company is being established at European level and can therefore, because of the scale and impact of such company, be better attained at Community level, the Community may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in the said Article, this Regulation does not go beyond what is necessary to attain these objectives,

4 See p. 22 of this Official Journal.

HAS ADOPTED THIS REGULATION:

TITLE I. GENERAL PROVISIONS

Article 1

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

Article 2

1. Public limited-liability companies such as referred to in Annex I, formed under the law of a Member State, with registered offices and head offices within the Community may form an SE by means of a merger provided that at least two of them are governed by the law of different Member States.
2. Public and private limited-liability companies such as referred to in Annex II, formed under the law of a Member State, with registered offices and head offices within the Community may promote the formation of a holding SE provided that each of at least two of them:

(a) is governed by the law of a different Member State, or
(b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

3. Companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community may form a subsidiary SE by subscribing for its shares, provided that each of at least two of them:

(a) is governed by the law of a different Member State, or
(b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

4. A public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.
5. A Member State may provide that a company the head office of which is not in the Community may participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

Article 3

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

Article 4

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

Article 5

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

Article 6

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

Article 7

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

5 OJ L 395, 30.12.1989, p. 40. Directive as last amended by the 1994 Act of Accession.

Article 8

1. The registered office of an SE may be transferred to another Member State in accordance with paragraphs 2 to 13. Such a transfer shall not result in the winding up of the SE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 13, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, registered office and number of the SE and shall cover:

- **(a)** the proposed registered office of the SE;
- **(b)** the proposed statutes of the SE including, where appropriate, its new name;
- **(c)** any implication the transfer may have on employees' involvement;
- **(d)** the proposed transfer timetable;
- **(e)** any rights provided for the protection of shareholders and/or creditors.

3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees.

4. An SE's shareholders and creditors shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine at the SE's registered office the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of those documents free of charge.

5. A Member State may, in the case of SEs registered within its territory, adopt provisions designed to ensure appropriate protection for minority shareholders who oppose a transfer.

6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 59.

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SE has its registered office prior to the transfer.
A Member State may extend the application of the first subparagraph to liabilities that arise (or may arise) prior to the transfer.
The first and second subparagraphs shall be without prejudice to the application to SEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

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

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

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

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

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

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

14. The laws of a Member State may provide that, as regards SEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.
Where an SE is supervised by a national financial supervisory authority according to Community directives the right to oppose the change of registered office applies to this authority as well.
Review by a judicial authority shall be possible.

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

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

Article 9

1. An SE shall be governed:

- **(a)** by this Regulation,
- **(b)** where expressly authorised by this Regulation, by the provisions of its statutes or
- **(c)** in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:
  - **(i)** the provisions of laws adopted by Member States in implementation of Community measures relating specifically to SEs;
  - **(ii)** the provisions of Member States' laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in

which the SE has its registered office;

(iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office.

2. The provisions of laws adopted by Member States specifically for the SE must be in accordance with Directives applicable to public limited-liability companies referred to in Annex I.

3. If the nature of the business carried out by an SE is regulated by specific provisions of national laws, those laws shall apply in full to the SE.

Article 10

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

Article 11

1. The name of an SE shall be preceded or followed by the abbreviation SE.

2. Only SEs may include the abbreviation SE in their name.

3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the abbreviation SE appears shall not be required to alter their names.

Article 12

1. Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with Article 3 of the first Council Directive (68/151/EEC) of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community[6].

2. An SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.

3. In order for an SE to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2001/86/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating companies must have been governed by participation rules prior to the registration of the SE.

4. The statutes of the SE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where new such arrangements determined pursuant to the Directive conflict with the existing statutes, the statutes shall to the extent necessary be amended.

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

Article 13

Publication of the documents and particulars concerning an SE which must be publicised under this Regulation shall be effected in the manner laid down in the laws of the Member State in which the SE has its registered office in accordance with Directive 68/151/EEC.

Article 14

1. Notice of an SE's registration and of the deletion of such a registration shall be published for information purposes in the Official Journal of the European Communities after publication in accordance with Article 13. That notice shall state the name, number, date and place of registration of the SE, the date and place of publication and the title of publication, the registered office of the SE and its sector of activity.

2. Where the registered office of an SE is transferred in accordance with Article 8, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 13.

TITLE II. FORMATION

Section 1. General

Article 15

1. Subject to this Regulation, the formation of an SE shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE establishes its registered office.

2. The registration of an SE shall be publicised in accordance with Article 13.

6 OJ L 65, 14.3.1968, p. 8. Directive as last amended by the 1994 Act of Accession.

Article 16

1. An SE shall acquire legal personality on the date on which it is registered in the register referred to in Article 12.

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

Section 2. Formation by merger

Article 17

1. An SE may be formed by means of a merger in accordance with Article 2(1).

2. Such a merger may be carried out in accordance with:

(a) the procedure for merger by acquisition laid down in Article 3(1) of the third Council Directive (78/855/EEC) of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited-liability companies[7] or

(b) the procedure for merger by the formation of a new company laid down in Article 4(1) of the said Directive.

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

Article 18

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

Article 19

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

Article 20

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

(a) the name and registered office of each of the merging companies together with those proposed for the SE;

(b) the share-exchange ratio and the amount of any compensation;

(c) the terms for the allotment of shares in the SE;

(d) the date from which the holding of shares in the SE will entitle the holders to share in profits and any special conditions affecting that entitlement;

(e) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the SE;

(f) the rights conferred by the SE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;

(g) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;

(h) the statutes of the SE;

(i) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/86/EC.

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

Article 21

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

(a) the type, name and registered office of every merging company;

(b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;

(c) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

(d) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

(e) the name and registered office proposed for the SE.

7 OJ L 295, 20.10.1978, p. 36. Directive as last amended by the 1994 Act of Accession.

Article 22

As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts as defined in Article 10 of Directive 78/855/EEC, appointed for those purposes at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the proposed SE, may examine the draft terms of merger and draw up a single report to all the shareholders.
The experts shall have the right to request from each of the merging companies any information they consider necessary to enable them to complete their function.

Article 23

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

Article 24

1. The law of the Member State governing each merging company shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

- **(a)** creditors of the merging companies;
- **(b)** holders of bonds of the merging companies;
- **(c)** holders of securities, other than shares, which carry special rights in the merging companies.

2. A Member State may, in the case of the merging companies governed by its law, adopt provisions designed to ensure appropriate protection for minority shareholders who have opposed the merger.

Article 25

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

Article 26

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SE, by the court, notary or other authority competent in the Member State of the proposed registered office of the SE to scrutinise that aspect of the legality of mergers of public limited-liability companies.
2. To that end each merging company shall submit to the competent authority the certificate referred to in Article 25(2) within six months of its issue together with a copy of the draft terms of merger approved by that company.
3. The authority referred to in paragraph 1 shall in particular ensure that the merging companies have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2001/86/EC.
4. That authority shall also satisfy itself that the SE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office in accordance with Article 15.

Article 27

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

Article 28

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

Article 29

1. A merger carried out as laid down in Article 17(2)(a) shall have the following consequences ipso jure and simultaneously:

- **(a)** all the assets and liabilities of each company being acquired are transferred to the acquiring company;
- **(b)** the shareholders of the company being acquired become shareholders of the acquiring company;

(c) the company being acquired ceases to exist;
(d) the acquiring company adopts the form of an SE.

2. A merger carried out as laid down in Article 17(2)(b) shall have the following consequences ipso jure and simultaneously:
(a) all the assets and liabilities of the merging companies are transferred to the SE;
(b) the shareholders of the merging companies become shareholders of the SE;
(c) the merging companies cease to exist.

3. Where, in the case of a merger of public limited-liability companies, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging companies or by the SE following its registration.

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

Article 30

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

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

Article 31

1. Where a merger within the meaning of Article 17(2)(a) is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of another company, neither Article 20(1)(b), (c) and (d), Article 29(1)(b) nor Article 22 shall apply. National law governing each merging company and mergers of public limited-liability companies in accordance with Article 24 of Directive 78/855/EEC shall nevertheless apply.

2. Where a merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of another company, reports by the management or administrative body, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

Member States may, however, provide that this paragraph may apply where a company holds shares conferring 90 % or more but not all of the voting rights.

Section 3. Formation of a holding SE

Article 32

1. A holding SE may be formed in accordance with Article 2(2).

A company promoting the formation of a holding SE in accordance with Article 2(2) shall continue to exist.

2. The management or administrative organs of the companies which promote such an operation shall draw up, in the same terms, draft terms for the formation of the holding SE. The draft terms shall include a report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the adoption of the form of a holding SE. The draft terms shall also set out the particulars provided for in Article 20(1)(a), (b), (c), (f), (g), (h) and (i) and shall fix the minimum proportion of the shares in each of the companies promoting the operation which the shareholders must contribute to the formation of the holding SE. That proportion shall be shares conferring more than 50 % of the permanent voting rights.

3. For each of the companies promoting the operation, the draft terms for the formation of the holding SE shall be publicised in the manner laid down in each Member State's national law in accordance with Article 3 of Directive 68/151/EEC at least one month before the date of the general meeting called to decide thereon.

4. One or more experts independent of the companies promoting the operation, appointed or approved by a judicial or administrative authority in the Member State to which each company is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC, shall examine the draft terms of formation drawn up in accordance with paragraph 2 and draw up a written report for the shareholders of each company. By agreement between the companies promoting the operation, a single written report may be drawn up for the shareholders of all the companies by one or more independent experts, appointed or approved by a judicial or administrative authority in the Member State to which one of the companies promoting the operation or the proposed SE is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC.

5. The report shall indicate any particular difficulties of valuation and state whether the proposed share-exchange ratio is fair and reasonable, indicating the methods used to arrive at it and whether such methods are adequate in the case in question.

6. The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE.

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

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

Article 33

1. The shareholders of the companies promoting such an operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares to the formation of the holding SE. That period shall begin on the date upon which the terms for the formation of the holding SE have been finally determined in accordance with Article 32.
2. The holding SE shall be formed only if, within the period referred to in paragraph 1, the shareholders of the companies promoting the operation have assigned the minimum proportion of shares in each company in accordance with the draft terms of formation and if all the other conditions are fulfilled.
3. If the conditions for the formation of the holding SE are all fulfilled in accordance with paragraph 2, that fact shall, in respect of each of the promoting companies, be publicised in the manner laid down in the national law governing each of those companies adopted in implementation of Article 3 of Directive 68/151/EEC.
Shareholders of the companies promoting the operation who have not indicated whether they intend to make their shares available to the promoting companies for the purpose of forming the holding SE within the period referred to in paragraph 1 shall have a further month in which to do so.
4. Shareholders who have contributed their securities to the formation of the SE shall receive shares in the holding SE.
5. The holding SE may not be registered until it is shown that the formalities referred to in Article 32 have been completed and that the conditions referred to in paragraph 2 have been fulfilled.

Article 34

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

Section 4. Formation of a subsidiary SE

Article 35

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

Article 36

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

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

Article 37

1. An SE may be formed in accordance with Article 2(4).
2. Without prejudice to Article 12 the conversion of a public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person.
3. The registered office may not be transferred from one Member State to another pursuant to Article 8 at the same time as the conversion is effected.
4. The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of an SE.
5. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called upon to decide thereon.
6. Before the general meeting referred to in paragraph 7 one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the company being converted into an SE is subject shall certify in compliance with Directive 77/91/EEC[8] mutatis mutandis that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the Statutes.
7. The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.
8. Member states may condition a conversion to a favourable vote of a qualified majority or unanimity in the organ of the company to be converted within which employee participation is organised.

8 Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1). Directive as last amended by the 1994 Act of Accession.

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

TITLE III. STRUCTURE OF THE SE

Article 38

Under the conditions laid down by this Regulation an SE shall comprise:
(a) a general meeting of shareholders and
(b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

Section 1. Two-tier system

Article 39

1. The management organ shall be responsible for managing the SE. A Member State may provide that a managing director or managing directors shall be responsible for the current management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.
2. The member or members of the management organ shall be appointed and removed by the supervisory organ.
A Member State may, however, require or permit the statutes to provide that the member or members of the management organ shall be appointed and removed by the general meeting under the same conditions as for public limited-liability companies that have registered offices within its territory.
3. No person may at the same time be a member of both the management organ and the supervisory organ of the same SE. The supervisory organ may, however, nominate one of its members to act as a member of the management organ in the event of a vacancy. During such a period the functions of the person concerned as a member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.
4. The number of members of the management organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, fix a minimum and/or a maximum number.
5. Where no provision is made for a two-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

Article 40

1. The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE.
2. The members of the supervisory organ shall be appointed by the general meeting. The members of the first supervisory organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.
3. The number of members of the supervisory organ or the rules for determining it shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory organ for SEs registered within its territory or a minimum and/or a maximum number.

Article 41

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business.
2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.
3. The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision in accordance with Article 40(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.
4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.
5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

Article 42

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

Section 2. The one-tier system

Article 43

1. The administrative organ shall manage the SE. A Member State may provide that a managing director or managing directors shall be responsible for the day-to-day management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.
2. The number of members of the administrative organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, set a minimum and, where necessary, a maximum number of members.

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

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

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

Article 44

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

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

Article 45

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

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

Article 46

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

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

Article 47

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

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

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

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

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

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

Article 48

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

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

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

Article 49

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

Article 50

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

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

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

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

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

Article 51
Members of an SE's management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

Section 4. General meeting

Article 52
The general meeting shall decide on matters for which it is given sole responsibility by:

(a) this Regulation or

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

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

Article 53
Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

Article 54
1. An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SE's registered office is situated applicable to public limited-liability companies carrying on the same type of activity as the SE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SE's incorporation.

2. General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

Article 55
1. One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request the SE to convene a general meeting and draw up the agenda therefor; the SE's statutes or national legislation may provide for a smaller proportion under the same conditions as those applicable to public limited-liability companies.

2. The request that a general meeting be convened shall state the items to be put on the agenda.

3. If, following a request made under paragraph 1, a general meeting is not held in due time and, in any event, within two months, the competent judicial or administrative authority within the jurisdiction of which the SE's registered office is situated may order that a general meeting be convened within a given period or authorise either the shareholders who have requested it or their representatives to convene a general meeting. This shall be without prejudice to any national provisions which allow the shareholders themselves to convene general meetings.

Article 56
One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request that one or more additional items be put on the agenda of any general meeting. The procedures and time limits applicable to such requests shall be laid down by the national law of the Member State in which the SE's registered office is situated or, failing that, by the SE's statutes. The above proportion may be reduced by the statutes or by the law of the Member State in which the SE's registered office is situated under the same conditions as are applicable to public limited-liability companies.

Article 57
Save where this Regulation or, failing that, the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires a larger majority, the general meeting's decisions shall be taken by a majority of the votes validly cast.

Article 58
The votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper.

Article 59
1. Amendment of an SE's statutes shall require a decision by the general meeting taken by a majority which may not be less than two thirds of the votes cast, unless the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires or permits a larger majority.

2. A Member State may, however, provide that where at least half of an SE's subscribed capital is represented, a simple majority of the votes referred to in paragraph 1 shall suffice.

3. Amendments to an SE's statutes shall be publicised in accordance with Article 13.

Article 60

1. Where an SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote by each class of shareholders whose class rights are affected thereby.

2. Where a decision by the general meeting requires the majority of votes specified in Article 59(1) or (2), that majority shall also be required for the separate vote by each class of shareholders whose class rights are affected by the decision.

TITLE IV. ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

Article 61

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

Article 62

1. An SE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions[9] as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.

2. An SE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings[10] as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

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

Article 63

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

Article 64

1. When an SE no longer complies with the requirement laid down in Article 7, the Member State in which the SE's registered office is situated shall take appropriate measures to oblige the SE to regularise its position within a specified period either:

- **(a)** by re-establishing its head office in the Member State in which its registered office is situated or
- **(b)** by transferring the registered office by means of the procedure laid down in Article 8.

2. The Member State in which the SE's registered office is situated shall put in place the measures necessary to ensure that an SE which fails to regularise its position in accordance with paragraph 1 is liquidated.

3. The Member State in which the SE's registered office is situated shall set up a judicial remedy with regard to any established infringement of Article 7. That remedy shall have a suspensory effect on the procedures laid down in paragraphs 1 and 2.

4. Where it is established on the initiative of either the authorities or any interested party that an SE has its head office within the territory of a Member State in breach of Article 7, the authorities of that Member State shall immediately inform the Member State in which the SE's registered office is situated.

Article 65

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

Article 66

1. An SE may be converted into a public limited-liability company governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

9 OJ L 126, 26.5.2000, p. 1.
10 OJ L 374, 31.12.1991, p. 7.

2. The conversion of an SE into a public limited-liability company shall not result in the winding up of the company or in the creation of a new legal person.
3. The management or administrative organ of the SE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of the adoption of the public limited-liability company for the shareholders and for the employees.
4. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called to decide thereon.
5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the SE being converted into a public limited-liability company is subject shall certify that the company has assets at least equivalent to its capital.
6. The general meeting of the SE shall approve the draft terms of conversion together with the statutes of the public limited-liability company. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

TITLE VI. ADDITIONAL AND TRANSITIONAL PROVISIONS

Article 67

1. If and so long as the third phase of economic and monetary union (EMU) does not apply to it each Member State may make SEs with registered offices within its territory subject to the same provisions as apply to public limited-liability companies covered by its legislation as regards the expression of their capital. An SE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SE.
2. If and so long as the third phase of EMU does not apply to the Member State in which an SE has its registered office, the SE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for public limited-liability companies governed by the law of that Member State. This shall not prejudge the additional possibility for an SE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/60/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu[11].

TITLE VII. FINAL PROVISIONS

Article 68

1. The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.
2. Each Member State shall designate the competent authorities within the meaning of Articles 8, 25, 26, 54, 55 and 64. It shall inform the Commission and the other Member States accordingly.

Article 69

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

(a) allowing the location of an SE's head office and registered office in different Member States;
(b) broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;
(c) revising the jurisdiction clause in Article 8(16) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;
(d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State.

Article 70

This Regulation shall enter into force on 8 October 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Luxembourg, 8 October 2001.

For the Council
The President
L. Onkelinx

11 OJ L 317, 16.11.1990, p. 57.

ANNEX I

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

BELGIUM:
la société anonyme//de naamloze vennootschap

DENMARK:
aktieselskaber

GERMANY:
die Aktiengesellschaft

GREECE:
ανώνυμη εταιρία

SPAIN:
la sociedad anónima

FRANCE:
la société anonyme

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

ITALY:
società per azioni

LUXEMBOURG:
la société anonyme

NETHERLANDS:
de naamloze vennootschap

AUSTRIA:
die Aktiengesellschaft

PORTUGAL:
a sociedade anónima de responsabilidade limitada

FINLAND:
julkinen osakeyhtiö//publikt aktiebolag

SWEDEN:
publikt aktiebolag

UNITED KINGDOM:
public companies limited by shares
public companies limited by guarantee having a share capital

ANNEX II

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

BELGIUM:
la société anonyme//de naamloze vennootschap,
la société privée à responsabilité limitée//besloten vennootschap met beperkte aansprakelijkheid

DENMARK:
aktieselskaber,
anpartselskaber

GERMANY:
die Aktiengesellschaft,
die Gesellschaft mit beschränkter Haftung

GREECE:
ανώνυμη εταιρία
εταιρία περιορισμένης ευθύνης

SPAIN:
la sociedad anónima,
la sociedad de responsabilidad limitada

FRANCE:
la société anonyme,
la société à responsabilité limitée

IRELAND:
public companies limited by shares,
public companies limited by guarantee having a share capital,
private companies limited by shares,
private companies limited by guarantee having a share capital

ITALY:
società per azioni,
società a responsabilità limitata

LUXEMBOURG:
la société anonyme,
la société à responsabilité limitée

NETHERLANDS:
de naamloze vennootschap,
de besloten vennootschap met beperkte aansprakelijkheid

AUSTRIA:
die Aktiengesellschaft,
die Gesellschaft mit beschränkter Haftung

PORTUGAL:
a sociedade anónima de responsabilidade limitada,
a sociedade por quotas de responsabilidade limitada

FINLAND:
osakeyhtiö
aktiebolag

SWEDEN:
aktiebolag

UNITED KINGDOM:
public companies limited by shares,
public companies limited by guarantee having a share capital,
private companies limited by shares,
private companies limited by guarantee having a share capital

COUNCIL DIRECTIVE 2001/86/EC OF 8 OCTOBER 2001 SUPPLEMENTING THE STATUTE FOR A EUROPEAN COMPANY WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES

OFFICIAL JOURNAL L 294 , 10/11/2001 P. 0022 - 0032

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the amended proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the Economic and Social Committee[3],

Whereas:

(1) In order to attain the objectives of the Treaty, Council Regulation (EC) No 2157/2001[4] (4) establishes a Statute for a European company (SE).

(2) That Regulation aims at creating a uniform legal framework within which companies from different Member States should be able to plan and carry out the reorganisation of their business on a Community scale.

(3) In order to promote the social objectives of the Community, special provisions have to be set, notably in the field of employee involvement, aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. This objective should be pursued through the establishment of a set of rules in this field, supplementing the provisions of the Regulation.

(4) Since the objectives of the proposed action, as outlined above, cannot be sufficiently achieved by the Member States, in that the object is to establish a set of rules on employee involvement applicable to the SE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve these objectives.

(5) The great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives are involved in decision-making within companies makes it inadvisable to set up a single European model of employee involvement applicable to the SE.

(6) Information and consultation procedures at transnational level should nevertheless be ensured in all cases of creation of an SE.

(7) If and when participation rights exist within one or more companies establishing an SE, they should be preserved through their transfer to the SE, once established, unless the parties decide otherwise.

(8) The concrete procedures of employee transnational information and consultation, as well as, if applicable, participation, to apply to each SE should be defined primarily by means of an agreement between the parties concerned or, in the absence thereof, through the application of a set of subsidiary rules.

(9) Member States should still have the option of not applying the standard rules relating to participation in the case of a merger, given the diversity of national systems for employee involvement. Existing systems and practices of participation where appropriate at the level of participating companies must in that case be maintained by adapting registration rules.

(10) The voting rules within the special body representing the employees for negotiation purposes, in particular when concluding agreements providing for a level of participation lower than the one existing within one or more of the participating companies, should be proportionate to the risk of disappearance or reduction of existing systems and practices of participation. That risk is greater in the case of an SE established by way of transformation or merger than by way of creating a holding company or a common subsidiary.

(11) In the absence of an agreement subsequent to the negotiation between employees' representatives and the competent organs of the participating companies, provision should be made for certain standard requirements to apply to the SE, once it is established. These standard requirements should ensure effective practices of transnational information and consultation of employees, as well as their participation in the relevant organs of the SE if and when such participation existed before its establishment within the participating companies.

1 OJ C 138, 29.5.1991, p. 8.
2 OJ C 342, 20.12.1993, p. 15.
3 OJ C 124, 21.5.1990, p. 34.
4 See page 1 of this Official Journal.

(12) Provision should be made for the employees' representatives acting within the framework of the Directive to enjoy, when exercising their functions, protection and guarantees which are similar to those provided to employees' representatives by the legislation and/or practice of the country of employment. They should not be subject to any discrimination as a result of the lawful exercise of their activities and should enjoy adequate protection as regards dismissal and other sanctions.
(13) The confidentiality of sensitive information should be preserved even after the expiry of the employees' representatives terms of office and provision should be made to allow the competent organ of the SE to withhold information which would seriously harm, if subject to public disclosure, the functioning of the SE.
(14) Where an SE and its subsidiaries and establishments are subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees[5], the provisions of that Directive and the provision transposing it into national legislation should not apply to it nor to its subsidiaries and establishments, unless the special negotiating body decides not to open negotiations or to terminate negotiations already opened.
(15) This Directive should not affect other existing rights regarding involvement and need not affect other existing representation structures, provided for by Community and national laws and practices.
(16) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.
(17) The Treaty has not provided the necessary powers for the Community to adopt the proposed Directive, other than those provided for in Article 308.
(18) It is a fundamental principle and stated aim of this Directive to secure employees' acquired rights as regards involvement in company decisions. Employee rights in force before the establishment of SEs should provide the basis for employee rights of involvement in the SE (the "before and after" principle). Consequently, that approach should apply not only to the initial establishment of an SE but also to structural changes in an existing SE and to the companies affected by structural change processes.
(19) Member States should be able to provide that representatives of trade unions may be members of a special negotiating body regardless of whether they are employees of a company participating in the establishment of an SE. Member States should in this context in particular be able to introduce this right in cases where trade union representatives have the right to be members of, and to vote in, supervisory or administrative company organs in accordance with national legislation.
(20) In several Member States, employee involvement and other areas of industrial relations are based on both national legislation and practice which in this context is understood also to cover collective agreements at various national, sectoral and/or company levels,

HAS ADOPTED THIS DIRECTIVE:

SECTION I. GENERAL

Article 1

Objective

1. This Directive governs the involvement of employees in the affairs of European public limited-liability companies (Societas Europaea, hereinafter referred to as "SE"), as referred to in Regulation (EC) No 2157/2001.
2. To this end, arrangements for the involvement of employees shall be established in every SE in accordance with the negotiating procedure referred to in Articles 3 to 6 or, under the circumstances specified in Article 7, in accordance with the Annex.

Article 2

Definitions

For the purposes of this Directive:
(a) "SE" means any company established in accordance with Regulation (EC) No 2157/2001;
(b) "participating companies" means the companies directly participating in the establishing of an SE;
(c) "subsidiary" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC;
(d) "concerned subsidiary or establishment" means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation;
(e) "employees' representatives" means the employees' representatives provided for by national law and/or practice;
(f) "representative body" means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE;
(g) "special negotiating body" means the body established in accordance with Article 3 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;
(h) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;

5 OJ L 254, 30.9.1994, p. 64. Directive as last amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

(i) "information" means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE;
(j) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE;
(k)"participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:
- the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
- the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

SECTION II. NEGOTIATING PROCEDURE

Article 3

Creation of a special negotiating body

1. Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.
2. For this purpose, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created in accordance with the following provisions:

(a) in electing or appointing members of the special negotiating body, it must be ensured:

(i) that these members are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together;

(ii) that in the case of an SE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE, in so far as:
- the number of such additional members does not exceed 20 % of the number of members designated by virtue of point (i), and
- the composition of the special negotiating body does not entail a double representation of the employees concerned.

If the number of such companies is higher than the number of additional seats available pursuant to the first subparagraph, these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ;
(b) Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories. They shall take the necessary measures to ensure that, as far as possible, such members shall include at least one member representing each participating company which has employees in the Member State concerned. Such measures must not increase the overall number of members.
Member States may provide that such members may include representatives of trade unions whether or not they are employees of a participating company or concerned subsidiary or establishment.
Without prejudice to national legislation and/or practice laying down thresholds for the establishing of a representative body, Member States shall provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.
3. The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE.
To this end, the competent organs of the participating companies shall inform the special negotiating body of the plan and the actual process of establishing the SE, up to its registration.
4. Subject to paragraph 6, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the

votes of members representing employees employed in at least two Member States,
- in the case of an SE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating companies, or
- in the case of an SE to be established by way of creating a holding company or forming a subsidiary, if participation covers at least 50 % of the overall number of employees of the participating companies.
Reduction of participation rights means a proportion of members of the organs of the SE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating companies.
5. For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.
6. The special negotiating body may decide by the majority set out below not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SE has employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 4. Where such a decision has been taken, none of the provisions of the Annex shall apply.
The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.
In the case of an SE established by way of transformation, this paragraph shall not apply if there is participation in the company to be transformed.
The special negotiating body shall be reconvened on the written request of at least 10 % of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Annex shall apply.
7. Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.
In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

ARTICLE 4
Content of the agreement

1. The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.
2. Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 between the competent organs of the participating companies and the special negotiating body shall specify:
(a) the scope of the agreement;
(b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;
(c) the functions and the procedure for the information and consultation of the representative body;
(d) the frequency of meetings of the representative body;
(e) the financial and material resources to be allocated to the representative body;
(f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;
(h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.
3. The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Annex.
4. Without prejudice to Article 13(3)(a), in the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE.

ARTICLE 5
Duration of negotiations

1. Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.
2. The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year from the establishment of the special negotiating body.

Article 6

Legislation applicable to the negotiation procedure

Except where otherwise provided in this Directive, the legislation applicable to the negotiation procedure provided for in Articles 3 to 5 shall be the legislation of the Member State in which the registered office of the SE is to be situated.

Article 7

Standard rules

1. In order to achieve the objective described in Article 1, Member States shall, without prejudice to paragraph 3 below, lay down standard rules on employee involvement which must satisfy the provisions set out in the Annex.

The standard rules as laid down by the legislation of the Member State in which the registered office of the SE is to be situated shall apply from the date of the registration of the SE where either:

(a) the parties so agree; or

(b) by the deadline laid down in Article 5, no agreement has been concluded, and:

- the competent organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE, and
- the special negotiating body has not taken the decision provided in Article 3(6).

2. Moreover, the standard rules fixed by the national legislation of the Member State of registration in accordance with part 3 of the Annex shall apply only:

(a) in the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a company transformed into an SE;

(b) in the case of an SE established by merger:

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25 % of the total number of employees in all the participating companies, or
- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25 % of the total number of employees in all the participating companies and if the special negotiating body so decides,

(c) in the case of an SE established by setting up a holding company or establishing a subsidiary:

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50 % of the total number of employees in all the participating companies; or
- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 50 % of the total number of employees in all the participating companies and if the special negotiating body so decides.

If there was more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms must be established in the SE. Member States may fix the rules which are applicable in the absence of any decision on the matter for an SE registered in their territory. The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to this paragraph.

3. Member States may provide that the reference provisions in part 3 of the Annex shall not apply in the case provided for in point (b) of paragraph 2.

SECTION III. MISCELLANEOUS PROVISIONS

Article 8

Reservation and confidentiality

1. Member States shall provide that members of the special negotiating body or the representative body, and experts who assist them, are not authorised to reveal any information which has been given to them in confidence.

The same shall apply to employees' representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the supervisory or administrative organ of an SE or of a participating company established in its territory is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SE (or, as the case may be, the participating company) or its subsidiaries and establishments or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

3. Each Member State may lay down particular provisions for SEs in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in the national legislation.

4. In applying paragraphs 1, 2 and 3, Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SE or participating company demands confidentiality or does not give information.

Such procedures may include arrangements designed to protect the confidentiality of the information in question.

Article 9

Operation of the representative body and procedure for the information and consultation of employees

The competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

The same shall apply to cooperation between the supervisory or administrative organ of the SE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

Article 10

Protection of employees' representatives

The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 4(2)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating company or the SE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

Article 11

Misuse of procedures

Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

Article 12

Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of an SE and the supervisory or administrative organs of subsidiaries and of participating companies which are situated within its territory and the employees' representatives or, as the case may be, the employees themselves abide by the obligations laid down by this Directive, regardless of whether or not the SE has its registered office within its territory.

2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular they shall ensure that administrative or legal procedures are available to enable the obligations deriving from this Directive to be enforced.

Article 13

Link between this Directive and other provisions

1. Where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Directive 94/45/EC or of Directive 97/74/EC[6] extending the said Directive to the United Kingdom, the provisions of these Directives and the provisions transposing them into national legislation shall not apply to them or to their subsidiaries.

However, where the special negotiating body decides in accordance with Article 3(6) not to open negotiations or to terminate negotiations already opened, Directive 94/45/EC or Directive 97/74/EC and the provisions transposing them into national legislation shall apply.

2. Provisions on the participation of employees in company bodies provided for by national legislation and/or practice, other than those implementing this Directive, shall not apply to companies established in accordance with Regulation (EC) No 2157/2001 and covered by this Directive.

3. This Directive shall not prejudice:

(a) the existing rights to involvement of employees provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;

(b) he provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SE.

4. In order to preserve the rights referred to in paragraph 3, Member States may take the necessary measures to guarantee that the structures of employee representation in participating companies which will cease to exist as separate legal entities are maintained after the registration of the SE.

Article 14

Final provisions

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 8 October 2004, or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

6 OJ L 10, 16.1.1998, p. 22.

Article 15
Review by the Commission

No later than 8 October 2007, the Commission shall, in consultation with the Member States and with management and labour at Community level, review the procedures for applying this Directive, with a view to proposing suitable amendments to the Council where necessary.

Article 16
Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 17
Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 8 October 2001.

For the Council
The President
L. Onkelinx

ANNEX

STANDARD RULES

(referred to in Article 7)

Part 1: Composition of the body representative of the employees

In order to achieve the objective described in Article 1, and in the cases referred to in Article 7, a representative body shall be set up in accordance with the following rules.

(a) The representative body shall be composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

(b) The election or appointment of members of the representative body shall be carried out in accordance with national legislation and/or practice.

Member States shall lay down rules to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SE and its subsidiaries and establishments.

(c) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.

(d) The representative body shall adopt its rules of procedure.

(e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

(f) The competent organ of the SE shall be informed of the composition of the representative body.

(g) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 4 and 7 or to continue to apply the standard rules adopted in accordance with this Annex.

Articles 3(4) to (7) and 4 to 6 shall apply, mutatis mutandis, if a decision has been taken to negotiate an agreement according to Article 4, in which case the term "special negotiating body" shall be replaced by "representative body". Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

Part 2: Standard rules for information and consultation

The competence and powers of the representative body set up in an SE shall be governed by the following rules.

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

(b) Without prejudice to meetings held pursuant to point (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects. The local managements shall be informed accordingly.

The competent organ of the SE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement.

In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

The meetings referred to above shall not affect the prerogatives of the competent organ.

(d) Member States may lay down rules on the chairing of information and consultation meetings. Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with the third subparagraph of paragraph

(c), shall be entitled to meet without the representatives of the competent organ being present.
(e) Without prejudice to Article 8, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.
(f) The representative body or the select committee may be assisted by experts of its choice.
(g) In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.
(h) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.
In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.
In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.

Part 3: Standard rules for participation

Employee participation in an SE shall be governed by the following provisions
(a) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. Point (b) shall apply mutatis mutandis to that end.
(b) In other cases of the establishing of an SE, the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.
If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation.
The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.

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Robert Taylor; research associate at the Centre for Economic Performance at the London School of Economics; working on a future of the trade unions project. He is writing a book on the new world of organised labour at the moment.

Norbert Kluge; social scientist; doctorate from the University of Kassel; senior research officer at the European Trade Union Institute (ETUI) in Brussels since 2002; 1988 - 2002 expert on co-determination at the Hans Böckler Foundation in Düsseldorf

Michael Stollt; political scientist; Magister Artium (M.A.) from the university of Münster (political sciences, public law, applied cultural studies) in 2003; research officer at the European Trade Union Institute (ETUI) in Brussels since November 2003

EUROPEAN TRADE UNION INSTITUTE (ETUI)

The ETUI is the research centre of the ETUC, studying socio-economic matters and industrial relations. It forms a link between the trade union movement and the academic world by conducting and promoting intellectually independent research on two areas of strategic importance for the world of labour:

- Europeanisation of industrial relations
- Employment, labour market and social policy.

The ETUI works via networks with research bodies and universities in various countries. It disperses the results of its work via conferences and seminars and via its wide-ranging publications. These include the annual European Trade Union Yearbook and Collective Bargaining in Europe, and the quarterly journal TRANSFER - European review of labour and research.

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In the field of workers' participation in the European Company, the ETUI is conducting the project "SEEUROPE - Taking the opportunity". The project is funded by the Hans Böckler Foundation until 2006. It offers the opportunity to monitor, on an ongoing basis, European Companies as they are set up, as well as their impact on cross-border participation of workers and cooperation among trade unions in Europe.

For further information see
www.seeurope-network.org

SEEurope

HANS BÖCKLER FOUNDATION

The Hans Böckler Foundation is the co-determination, research and scholarship mechanism of the German Federation of Trade Unions. And it is in these three spheres of activity that the Hans Böckler Foundation is working to help shape the working environment of the future.

- It actively encourages co-determination in Germany by offering advice and support to those who practise it.
- It searches for answers to questions regarding the working environment by supporting research and conducting research itself.
- It is the second-largest scholarship fund in Germany, with a clear focus on social and trade union commitment.

In the magazine Mitbestimmung (co-determination) and in the WSI-Mitteilungen (WSI Newsletter), the Hans Böckler Foundation provides monthly updates on issues from the world of work and academia. It also publishes several series of books and a variety of other publications.

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