



Employee involvement in companies under the European Company Statute

Executive summary

Introduction

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

Policy context

In view of the upsurge in the number of SEs created in recent years, there has been considerable debate on how the SE directive might affect national industrial relations and existing frameworks of employee involvement. Employers have raised concerns that countries with strong codetermination rights may become less attractive for SEs, while employee representatives and trade unions worry that these very codetermination rights may be watered down by transforming an existing company into a SE. In September 2008, the European Commission published a document entitled *Communication from the Commission on the Review of Council Directive 2001/86/EC of 8 October 2001*. An important message of

this communication is that it is too early to make a full assessment of the SE directive. It said: ‘the vast majority of Member States and the European social partners consider that, for the time being, the Directive does not require amendment or clarification. Given the virtual lack of experiences in applying the national provisions transposing the Directive, more time is needed before it can be established whether amendments are necessary.’

Key findings

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

The case studies show that generally an SE is used by the company to streamline and create leaner company structures in an international environment. For management, the agreement on employee

involvement is a necessary precondition for the creation of the SE. It helps to create a European company identity. For the employees, the agreement on employee involvement meant that codetermination rights in the supervisory board were secured or even improved, and important rights were obtained for the SE works council. Employee involvement in the SE is not seen by the companies concerned as something 'arbitrary' but as an integral part of corporate governance in the EU.

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

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

The active involvement of trade unions (at both national and EU level) was an important source of support for company employee representatives. Involvement of EU-level trade unions favoured the 'Europeanisation' of interest representation. The

negotiation of employee involvement in SEs creates an opportunity for an EU level of interest representation that supports the development of a European identity as well as 'European mandates' (by which is meant the evolution of a level of interest representation and articulation of employee interests, shaped more by European than national interests). The negotiations on employee involvement in SEs led to agreements and actions that are regarded as positive by actors on both sides.

Policy pointers

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

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

The inventory of existing SEs that was carried out for this report indicates that 'shelf' and 'empty' SEs have developed into a significant group of existing European companies. What is worrying about this type of SE is that the directive does not provide for any action in terms of employee involvement in cases where an 'empty' or 'shelf' SE is turned into a normal one. Whether or not this may result in a concrete need to adjust the 'before and after' principle of the directive is an important point of debate amongst European social partners and experts.

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

Further information

The report, *Employee involvement in companies under the European Company Statute*, is available online at <http://www.eurofound.europa.eu/eiro/studies/tn1008022s/index.htm>

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