

Workers' participation in the European Company (Societas Europea – SE)

AN ADDITIONAL REFERENCE IN EUROPEAN INDUSTRIAL RELATIONS *

On 8 October 2001 the EU Council of Ministers adopted the two interlinked legal instruments necessary for the creation of European Companies (SE): a regulation on a statute for European Companies and a Directive on employee involvement within them. The move is a historic breakthrough, coming 31 years after it was first proposed. The regulation and the national transpositions of the Directive will come into force on 8 October 2004 in all 25 member states of the enlarged European Union, together with Iceland, Liechtenstein and Norway as members of the European Economic Area. From that moment, companies can opt freely for these European Statutes in four sets of circumstances: an SE can be created (i) by a merger, (ii) by setting up a holding, or (iii) a joint subsidiary, or (iv) by transforming an existing company into an SE.

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**

Köstler (2003)

* source: European Trade Union Institute (ed.): Benchmarking Europe 2004. Brussels;

See also:

ETUI and Hans Böckler Foundation (ed.), *The European Company - Prospects for board-level representation*, Brussels and Düsseldorf (forthcoming).

Köstler, R. (2003) *The European Company*, in R. Köstler and A. Büggel, *The European Company and Company law and Existing legislative provision for employee participation in the EU member states*, Brussels: ETUI. Report 79

After a company has announced its intention to set up an SE the management must initiate the formation of a Special Negotiating Body (SNB). This SNB includes only workers' representatives from the concerned enterprises. Within six months they have to work out an agreement with management on the way to exercise information and consultation rights as well as participation at board level in the future SE. Should these negotiations fail, standard rules will apply. No SE can be set up without an arrangement on the way workers are to be involved. The SE directive not only safeguards the existing participation rights of workers' representatives but also offers the opportunity for more employees in Europe than even before to be covered by board-level participation. Through this participation, employee representatives will have access to information before strategic decisions are taken, thereby enjoying a better chance of influencing those decisions.

For the time being, the transposition of the Directive into national laws on workers' involvement in the SE is an important area for monitoring (see e.g. www.seeurope-network.org).

Benchmarks for this period should be that:

- Member states do not make use of the opt-out clause, which enables them to refrain from applying the standard rules in the case of a merger.
- Transposition laws provide for the possibility to include trade union representatives in the SNB even in cases where they are not employed by the companies. This is also important to allow the involvement of representatives of the European Industry Federations.
- Member states do not limit the funding of external expertise to the SNB and 'SE works council' to a single expert.

In the wake of the SE legislation, the statutes for a European Cooperative Society (SCE) for a European Mutual society (ME) and a European Association (EA) will be adopted soon.

Conclusions:

As from October 2004, the national transpositions of Directive 2001/86 offer a policy frame for EU-level worker participation in companies opting for European statutes (SE). This new legislation represents a historic compromise whereby workers' participation on management or supervisory boards becomes standard practice. In the coming years attention must be drawn to the fact that this is now a required standard that must not be lowered in subsequent EU legislation, e.g. on cross-border mergers and on the cross-border transfer of the seat of an enterprise from one European country to another. The benchmark for the future is to enhance, and not to marginalise, the position of employees in cross-border enterprises."

Board-level representation in the EU-15

In 12 of the 15 EU countries there exist legal obligations for board-level representation of employees (BLR). Even in Italy and Belgium that have no legal regulations, instances made be found (albeit exceptional) of workers' representatives sitting on the board as the result of a collective agreement. Only in the UK is there no law or practice of this kind at all.

Depending on the company structure in the respective member state, the workers' representatives may either sit on the board of directors (in a single-tier model with only a management board) or on the supervisory board (in a two-tier model with a management board and a supervisory board).

Within every country a specific system has evolved and BLR is always embedded in a wider context of the national industrial relations systems. Consequently, the situation differs significantly among the member states.

Where BLR is widespread, i.e. where it comprises private companies as well, two different cultures are found. In Germany and Austria, BLR is regulated by law whereas in the Scandinavian states it is based on collective agreements (albeit backed up by a legal framework).

The other member states have only limited versions of BLR for state-owned or privatised companies. These are either based on laws or collective agreements. Portugal is a special case, as the law there has virtually never been implemented by the governments in power.

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

➤ **minimum employee thresholds**

These thresholds range between 25 employees in Sweden and 500 in Germany.

➤ **the number of board members employees are entitled to send**

This ranges from one member (Portugal), through one third of the board (e.g. Denmark and Austria), to half of the board (Germany). In Finland, their number is part of the agreement between the employer and the employee sides.

➤ **the election or appointment procedure**

In the majority of the countries board members are selected through a general vote of all employees. Exceptions to this include Sweden where it is a trade union right and Austria where the works council appoints the workers' board members.

➤ **the eligibility criteria for the board members**

In almost all countries, worker representatives on the board must be employees of the company. External trade union officers, for example, are only rarely eligible. Contrary to this, in the Netherlands it is explicitly stated that board members must never be employed by the company. But it must be borne in mind that the Dutch system diverges completely from the others in that the works council has the right to nominate or oppose candidates for the supervisory board (the board members will then be appointed by the board itself). However, these members do not specifically represent the interests of the employees on the board.

In general the workers' representatives have the same rights and duties as the supervisory or management board members who have been appointed by the shareholders. However, cases are known where decision making was shifted outside the board.

Overview: Board-level representation (BLR) in the EU-15

	LEGISLATION ON BLR		NUMBER OF REPRESENT.	APPOINTMENT BY			ELIGIBILITY ONLY E ?	COMPANY STRUCTURE	
	STATE OWNED C*	PRIVATE C		TU	WC	VOTE			
AT	●	●	1/3		●		●	D	
BE									
DK	●	●	1/3			●	●	M	
FI	●	●	agreement		●		●	M D	
FR	●		1/3 resp. 2-3			●	●	M D	
DE	●	●	1/3 – 1/2	● (TU seats)		●	● (except TU seats)	D	
GR	●		2-3			●	●	M	
IE	●		(mostly) 1/3			●	●	M	
IT									
LU	●	●	(max.) 1/3	● (TU seats in iron & steel C)	●		●	M	
NL	(●)	(●)	WC have the right to recommend and oppose appointment of Supervisory Board members						D
PT	●		1 member			●	●	M	
ES	●		2 members	●				M	
SE	●	●	2-3	●			●	M	
UK									

* including privatised companies

Abbr.: C=Company, E=Employees, TU=Trade Unions, WC=Works Council/Elected worker representatives, M=monistic structure, D=Dualistic structure

Board level representation in the new EU member states

When the ten new member states join the EU in May 2004, they are required to transpose the legislation on the European Company – just like the other Member States – by October 2004. As such, it is important to look also at the situation in these countries.

Just as in the case of the current EU-15, a comparison of the countries reveals more differences than similarities. Although legislation only began to be passed since 1990, these countries approached the establishment of national systems of industrial relations and worker participation in varying ways. Therefore one cannot speak of a uniform model in the new EU countries. Most of them, except Cyprus and the three Baltic States, do, however, have legislative provisions on board-level representation of employees (BLR). This legislation, moreover, is independent of that country's general rules on company structures (single- or two-tier).

Looking ahead to negotiations on worker participation in the SE, the legal situation does at least provide a point of reference from which to start out when seeking to agree a common position and to find negotiated solutions with the employers. However, as the experiences in the EU-15 show, the existence of legal obligations does not automatically imply an adequate practice. More in-depth studies are therefore needed to find out more about the implementation and the real impact of BLR.

Overview: Board-level representation (BLR) in the new EU member states

	LEGISLATION ON BLR		NUMBER OF REPRESENTATIVES	APPOINTMENT BY			ELIGIBILITY: ONLY E ?	COMPANY STRUCTURE
	STATE OWNED C*	PRIVATE C		TU	WC	VOTE		
CYPRUS								
CZECH REPUBLIC	●	●	1/3			●	● in private C	D
ESTONIA								
HUNGARY	●	●	1/3	must be consulted	●		●	D
LATVIA								
LITHUANIA								
MALTA	●		1 member			●		M
POLAND	●		(mainly) 2/5			●		D
SLOVAKIA	●	●	1/3 (private C) 1/2 (state- owned C)	1 seat in state owned C		●		D
SLOVENIA	●	●	1/3 - 1/2 (statutes of C)		●		●	D

* including privatised companies

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