

## **Country report: (3) Transposition process**

**GERMANY**

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In view of the deadline (8 October 2004) set by the European legislator for transposition of the SE Statute and SE Directive into national law, the German government planned to complete a comprehensive draft regulation by September 2003, covering implementation of both the SE Statute and the SE Directive, and to bring this draft text before parliament. However, in September 2003 only a draft discussion paper by the Ministry of Justice – which is responsible for transposition of the SE Statute – was ready, covering the national supplementary provisions necessary for introduction of the SE.

This draft discussion paper refers only to company-law issues governing the establishment and structure of an SE, and says nothing about the intended regulation of employee involvement. This latter aspect comes under the jurisdiction of the Ministry of Trade, Industry and Labour, which also planned to issue a discussion paper outlining its ideas on transposition of the SE Directive into national law and to submit this discussion paper to representatives of both social partners for comment. However, this discussion paper from the Ministry of Trade, Industry and Labour never materialised. Due to time pressure, representatives of the two ministries involved in the transposition of the SE Statute and SE Directive are currently discussing the formulation of a government bill covering both the company-law aspects and the provisions for employee involvement in the SE.

Since the German law on joint stock companies is entirely based on the premise of a dualistic corporate governance structure the most problematic area with regard to the transposition of the SE Statute as envisaged in the Ministry of Justice's draft discussion paper is the formulation of national supplementary rules allowing for a monistic structure like that of the SE. The German legislator faces two crucial problems here:

1. How will it be possible to integrate elements of codetermination into the monistic system of corporate governance?

2. How can the monistic system be adapted to the German law on joint stock companies which presupposes a dualistic corporate governance structure?

The two sides of industry in principle welcome the adoption of both the SE Statute and the SE Directive. While the company-law aspects of SE introduction are fairly unproblematic for the employers' organisations, they express strong reservations concerning the intention of the German legislator to use the (comparatively high) German standards of codetermination as reference point for the national regulations governing employee involvement in the SE.

According to a statement issued by the employers' organisations, their main bones of contention are, first, that no SE would be established in Germany if the German legislator uses German codetermination rights as a benchmark for national implementation of the SE Directive's standards; and second, that German companies would practically be excluded from establishing SEs abroad since no foreign company would accept the de-facto importation of German-style codetermination.

The most important issue for the German trade unions, particularly with regard to implementation of the SE Directive, is preservation of the German codetermination system, elements of which would be imported into the national regulations on the SE. This is of particular importance in relation to the national supplementary rules on the establishment of a monistic SE in Germany in order to ensure that German codetermination rights also apply to employee representatives on the administrative board.