

**Worker involvement in SEs
Working Paper N°. 10
Editorial errors in the Dir/SE
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A comparison of the German, French and English versions of the directive has yielded two types of inconsistencies. First, there are editorial errors that occur in all three language versions.¹ Besides these errors, there is a major discrepancy between the English version and the other two language versions in important points.

Editorial errors in all three language versions of the directive

Article 8.2:

*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.*

Article 8.2 evidently contains an editorial error. Article 8.1 deals with the obligation of worker representatives in a special negotiating body or a body representing the employees to hold information confidential, but Article 8.2 suddenly refers to having information kept confidential by the **supervisory or administrative body of the SE**. Article 8.4 makes it clear that what is being referred to here is information that is given to employee representatives by the supervisory or administrative body. However, the 'competent body' that is responsible for conveying information to the body representative of the employees is the management of the SE, not the supervisory or administrative bodies.

This is most likely due to an oversight in the preparation of this article, which otherwise is taken almost literally from the EWC Directive, and Article 8.2 must be understood to mean that here the **competent body of the SE**, the corporate management, is to be given the right to refuse

¹ We have not checked whether there are additional errata in the other language versions of the directive.

to convey information to the body representative of the employees of the SE in specific cases.

Standard Rules for employee participation, Part 3:

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.

The employee representatives in the supervisory or administrative body of the SE do not have national mandates, but instead European mandates. Each individual member of a supervisory or administrative body of an SE who is nominated by the employees represents all of the employees of the SE, rather than just a national constituency. Consequently, the representative body must be able to decide how these seats are allocated.

Discrepancies among the different language versions

Article 4.2.b German version	Article 4.2.b English version	Article 4.2.b French version
Unbeschadet der Autonomie der Parteien und vorbehaltlich des Absatzes 4 wird in der schriftlichen Vereinbarung nach Absatz 1(...) Folgendes festgelegt (...) b) die Zusammensetzung des Vertretungsorgans als Verhandlungspartner des zuständigen Organs der SE (...)	Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 (...) shall specify : (...) 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 (...)	Sans préjudice de l'autonomie des parties, et sous réserve du paragraphe 4, l'accord visé au paragraphe 1 (...) fixe : (...) la composition, le nombre des membres et la répartition des sièges de l'organe de représentation qui sera l'interlocuteur de l'organe compétent de la SE (...)

Two differences are immediately evident. According to the German version, the special negotiating body is obliged to conclude a written agreement, while the other two language versions refer only to an 'agreement' or an 'accord', without requiring it to be in writing. However,

given the issue in question, anything other than a written agreement is simply inconceivable.

In the German version, the representative body is designated as the 'Verhandlungspartner', which fully corresponds to the French 'interlocuteur'. The English version, by contrast, differs significantly from the other two versions by granting the representative body only the rank of a 'discussion partner' of the competent organ of the SE. This does not correspond to the rights of the representative body under the provisions of the SE Directive.

Article 8.1 German version	Article 8.1 English version	Article 8.1 French version
Die Mitgliedstaaten sehen vor, dass den Mitgliedern des besonderen Verhandlungsgremiums und des Vertretungsorgans sowie den sie unterstützenden Sachverständigen nicht gestattet wird, ihnen als vertraulich mitgeteilte Informationen an Dritte weiterzugeben.	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.	Les États membres prévoient que les membres du groupe spécial de négociation ou de l'organe de représentation, ainsi que les experts qui les assistent, ne sont pas autorisés à révéler à des tiers des informations qui leur ont été communiquées à titre confidentiel.

This is a significant difference. In the German and French versions, the members of the special negotiating body or the representative body are not authorised to disclose information to third parties that has been given them in confidence. However, employee representatives in the supervisory body of the SE and national employee representatives of the SE are not third parties in the sense of the SE Directive, since they are themselves subject to rules of confidentiality. In the English version, the term 'third party' is totally missing. According to the wording of the English version, members of the representative body would not even be allowed to reveal information given them in confidence to the employee representatives in the supervisory body. The wording of the English version of Article 8.1 is based on an editorial error that must be corrected.