



**The Directive on Worker
involvement in the European
Company (SE)
Worker Involvement in the SE
Working Paper No. 1
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At the meeting of the Council of Ministers for Employment and Social Affairs on 8.10.2000, the Directive for worker involvement in the European Company was adopted ¹

The Directive has the following basic outline:

An SE can be created as a daughter company, through a merger, by conversion of an existing public limited company or it can be formed directly as a holding company. An SE cannot be registered with the Register of Commerce unless a system for worker involvement has been devised.

Information, consultation, participation

Under the directive, worker involvement means: information, consultation and participation. All three terms are defined.

Information means that worker representatives are to be informed by the competent body of the SE on all matters that

- concern the SE as a whole or its branches in another country [i.e. a country other than that in which the SE has its headquarters];
- or that fall outside the decision-making powers of the national management of the SE.

The time, manner and content of the information must be such as to allow the workers' representatives to undertake a comprehensive analysis and where necessary prepare consultation with the competent body of the SE.

For the purpose of the Directive, consultation means establishing a dialogue and an exchange of views between worker representatives and the competent body of the SE. The time, manner and content of that consultation must be such to allow the worker's representatives to express an opinion concerning a planned measure on the basis of the information

¹ The Regulation on the SE-Statute was also adopted. The transposition time for the Directive on Workers Involvement is three years.



received. That opinion must be taken into account in the company's decision-making process.

The term "participation" is to be understood as meaning the possibility for the workers' representatives of an SE to exercise an influence on the affairs of the company either by electing or nominating a certain number of members to the supervisory organ or to the administrative organ (Board of Directors), or by having the right to recommend the election of all or part of the members of the supervisory organ or administrative organ.

Negotiations

Worker involvement – namely the information, consultation and participation of workers in the SE – is a matter for negotiation. The negotiating parties are the managements of the undertakings involved in establishing the SE and a special negotiation group representing the workers.

Once the plan to establish an SE (by merger, conversion or other) is made known, the competent bodies of the undertakings concerned must take the necessary steps to open negotiations on worker involvement with the workers' representatives.

The procedure in this case is different from that of the European works council. The EWC-Directive requires the workers to submit an application for establishing a special negotiating body. The Directive for worker involvement in the SE provides that it is for the managements of the founding undertakings to take the necessary steps to initiate negotiations.

The special negotiating body is constituted according to a pre-determined key. Each 10% of the (future) SE's workforce is entitled to one seat in that body. A special rule has been devised for mergers. Each undertaking participating in the creation of an SE is entitled to at least one representative in the special negotiating body.

Trade union representatives may be members of the special negotiating body whether or not they are employees of the undertaking.

Decisions are adopted by an absolute majority of members representing a majority of the workers of the (planned) SE.

Where an agreement for worker involvement negotiated by the special negotiating body entails a weakening of existing participation rights, special qualified majority rules apply. Such agreements must be approved by a majority of 2/3 of the negotiating body, representing at least 2/3 of the employees from at least two different Member States.

The directive clearly defines what is meant by a weakening of participation rights: when workers representatives are entitled to fewer seats on the



supervisory organ or administrative organ of the SE than they previously had on the supervisory organ or administrative organ of one of the founding undertakings. For example: three undertakings, Alpha, Beta and Gamma, decide to join together in forming an SE. Each undertaking has a Supervisory Board. Workers' representatives have two seats on each of the Alpha and Beta Supervisory Boards, whereas they have 6 seats on the Gamma Board. The special negotiating body negotiates an agreement giving workers' representatives 5 seats on the SE Supervisory Board, namely one seat less than on the Gamma Board. That agreement therefore weakens existing participation rights and is subject to the approval of a qualified majority of 2/3 of the members of the special negotiating body.

The special negotiating body can call upon experts of its choice for support in its work. Representatives of workers' organisations at European level (namely, the European Industry Federations) can also be experts. The special negotiating body can decide to allow experts to participate in negotiations with the competent body of the SE.

The special negotiating body can decide to break off negotiations on participation, or not to initiate them at all. Such decisions are subject to a 2/3 majority (2/3 majority of special negotiating body members representing 2/3 of the workers from at least two different Member States).

The undertakings forming the SE must bear the costs of the special negotiating body. Negotiations must be guided by the will to reach an agreement. Negotiations last 6 months and can be extended by mutual agreement of both parties for one further 6 month-period.

Standard rules

If the negotiations fail, or produce no result, standard rules apply. The standard rules regulate information, consultation and participation. The standard rules cannot be rejected by the executive bodies of the SE-founding undertakings who must accept them or dispense with the SE altogether.

The standard rules provide for a series of exceptions in respect of participation. For an undertaking converting into an SE, when participation negotiations fail SE reference rules only apply if the undertaking concerned was subject to national participation rules before it was converted into an SE.

For SE's created by merger, the standard rules apply automatically if at least 25% of the workers were previously covered by a participation system. If less than 25% of the workers were covered by a participation system, the special negotiating body must decide to apply the reference rules by special vote.



For an SE established as a holding company, the corresponding limit is 50%.

The standard rules provide the following:

A worker representation will be created for information and consultation purposes. No minimum or maximum number of members is set, there is only a key for representation: one representative per 10% of the workforce.

(In implementing the Directive on worker involvement in the SE), the Member States must adopt rules for adapting the composition of the workers' representation to changes in the structure of the SE.

The SE's workers' representation is responsible for all matters concerning the SE as a whole, for matters concerning SE branches established in other countries (ie. other than the principal place of establishment) and for matters outside the powers of a national management body.

The SE workers' representation receives regular reports on the SE's development from the competent body and is entitled to meet with that body at least once a year for information and consultation. The SE workers' representation receives a copy of the documentation from the SE Supervisory Board or Board of Directors' meetings.

The topics for information and consultation are the same as the information and consultation topics set out in the subsidiary rules of the EWR-Directive.

Moreover, the competent SE body is required to inform and consult the SE workers' representation whenever extraordinary circumstances particularly affecting the workers' interests arise. Should the competent SE body decide not to take into account the position of the workers' representation, the workers' representation is entitled to a further meeting with the competent body. The parties must strive to reach agreement at this meeting.

The workers' representation is entitled to a preparatory meeting prior to each meeting with SE management.

As regards participation, the standard rules are as follows:

For SE's created by the conversion of an existing undertaking, all participation rules in force prior to the conversion remain applicable in the SE.

For SE's formed otherwise than through conversion, workers are entitled to as many seats on the SE supervisory organ or administrative board as corresponds to the highest share in the most advanced national model.



The Member States can decide not to apply the reference rules on participation to SE's formed by a merger. This partial opting-out applies only to SE's formed by merger and not to SE's constituted by other means; it also has a special price: an SE created as a result of a merger cannot be registered in a Member State that has not implemented the reference rules for such SE's – unless, of course, the workers' representation decides by the above-indicated majority to break off participation negotiations.

Further working papers published so far by the ETUC on workers involvement in the SE:

- a) "Opting out" of Member States in the event of mergers (working paper No.2)
- b) Negotiations on worker Involvement in the SE, rules for the composition of the Special Negotiating Body and votes within the SNB (working paper No. 3)
- c) Employees' representative body or EWC (Working Paper No.4)
- d) The standard rules – when do they apply (working paper No. 5)
- e) Negotiating an agreement on worker involvement in the SE (working paper no.6)

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