



**Worker Involvement in  
the SE  
Working Paper No. 5/2<sup>1</sup>  
Standard Rules  
19.10.2001**

## **The European Company = SE Standard Rules**

### **I.**

#### **When do Standard Rules apply?**

In working paper N° 4<sup>2</sup> of 16 March 2001, we already briefly mentioned the fact that the standard rules contemplated by the SE Directive only apply under certain conditions.

The conditions in the SE Directive for the applicability (or non-applicability) of the standard rules are not immediately self-explanatory. The purpose of this paper is to clarify those conditions. To do so it will often be necessary to refer to the company-law provisions contained in the SE Regulation.

Article 7 of the SE Directive sets out the conditions under which the standard rules apply. The standard rules themselves can be found in the annexe to the SE Directive and are divided into 3 sections:

Part 1: Composition of the body representative of employees

Part 2: Standard rules for information and consultation

Part 3: Standard rules for participation

Only parts 2 and 3 of the standard rules will be examined below; an examination of part 1 is unnecessary.<sup>3</sup>

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<sup>1</sup> Replaces working paper no.5 from 25.6.2001

<sup>2</sup> Now replaced by working paper no. 4/2 of 19.10.2001



## Part 2: Standard rules for information and consultation

Under Article 7(1) of the SE Directive, the standard rules apply where either:

(a) the parties so agree; or

(b) by the deadline laid down in Article 5, no agreement has been concluded,

and:

- the competent organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE; and
- the special negotiating body has not taken the decision provided in Article 3(6).

The rule under a) is simple:

The special negotiating body and company management enter into negotiations, but they themselves do not negotiate an agreement under Article 4 of the SE Directive, preferring to apply the standard rules. They therefore agree to do so. Obviously they can and should agree to apply both part 2 (information and consultation) and part 3 (participation) of the standard rules.

The rule under b) is as follows: the parties, i.e. the special negotiating body and the company management,<sup>4</sup> have failed to reach an agreement within 6 months or, if they have agreed to extend the negotiating period to one year, within this year. However, the standard rules only apply here if all the participating companies have agreed to apply the standard rules. If just one of the participating companies refuses to agree, the SE may not be registered, and the proposed SE formation will have fallen through.

If all the companies involved have agreed, the procedure for establishing the SE continues.

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<sup>3</sup> It is not necessary to examine part 1 in this working paper because it merely concerns the composition and certain rights of the representative body (election, election of a select committee, rules of procedure, review after 4 years, whether an agreement can be concluded). Where neither part 2 nor part 3 applies, part 1 obviously does not apply either. See also working paper N° 4/2 of 19.October 2001, in which part 1 has already been discussed.

<sup>4</sup> Company management is used as a general expression here; obviously one should clarify in each individual case the identity of the competent body of each participating company within the meaning of the SE Directive.



However, according to Article 3(6) of the SE Directive the standard rules will still not apply if the special negotiating body decides either not to initiate negotiations or opts to break them off. Such a decision must be taken by a 2/3 majority in the special negotiating body. This 2/3 majority in the special negotiating body must represent at least 2/3 of all employees, and employees in at least two Member States.

If the special negotiating body has decided with the required 2/3 majority to break off negotiations (or not to initiate them), and if the remaining conditions for taking a decision are satisfied, the standard rules will not apply even if the participating companies had agreed to do so.

**To summarise:** the standard rules for information and consultation apply in case b) where

- the special negotiating body and company management have failed to reach an agreement within the deadline (6 months or 1 year by mutual agreement), and
- all participating companies agree to apply the standard rules, and
- the special negotiating body has not decided not to initiate negotiations or to bring them to an end.

**Note:** In the case of an SE established by way of transformation, Article 3(6) of the SE Directive does not apply if there is participation in the company to be transformed. In such a case, the special negotiating body cannot pass a resolution to initiate or break off negotiations.

### **Part 3: Standard rules for participation**

For the standard rules on participation to apply, the same conditions must be satisfied as for the standard rules for information and consultation (see under "to summarise" above).

However, the mere fact that no agreement is concluded within the deadline, that all participating companies consent to the application of the standard rules and that the SNB has neither taken a decision not to open negotiations, nor decided to break them off still does not mean that part 3 of the standard rules, namely the rules governing participation, is automatically applicable.

Paragraphs 2 and 3 of Article 7 of the SE Directive contain additional requirements for employee participation which determine whether part 3 of the standard rules applies. It is perfectly possible for employees' representatives in the SE (the representative body) to have rights to information and consultation but no right to participation.

Article 7(2) of the SE Directive distinguishes three sets of circumstances, and these circumstances are in turn sub-divided. For a better



understanding of the rules, attention must therefore be paid to individual cases and the distinctions between them.

## Case 1: Transformation

Under the SE Regulation, public limited-liability companies formed under the law of a Member State, with registered offices and head offices within the Community may form an SE by means of transformation if they have had a subsidiary company for at least 2 years which is subject to the national legislation of another Member State (Article 37 in conjunction with Article 2(4) of the Council Regulation). The “transformation case” is straightforward: the company must be a public limited liability company in one Member State with a subsidiary in another.

In the case of an SE set up by transformation, the standard rules for participation (part 3 of the annexe) only apply if the participation rules of a Member State already applied to the public limited liability company before its transformation into an SE (Article 7 (2) a) of the SE Directive).

Therefore, if a public limited liability company to which no participation rules previously applied is transformed into an SE, the standard rules do not apply, and there will be no participation in the SE. If on the other hand a public limited liability company in which participation applied is transformed into an SE, the standard rules do apply and the SE is accordingly subject to participation.

For the employees of the company under transformation, therefore, nothing changes in this respect: where there is already participation it will continue in the SE. Where there is no participation, there will be none in the SE (unless it is agreed jointly between the parties, which is always possible.)

### SE by transformation

#### Example I

**Example 1:**

A-Stahl AG, whose registered offices are in Hanover, Germany, with a subsidiary in Denmark for the past 5 years, decides to transform into an SE. Equal participation exists in A-Stahl AG in Hanover. The Supervisory Board consists of 20 members, 10 of whom are employees' representatives. The acting chair of the Supervisory Board is an employees' representative. A special negotiating body is set up to initiate negotiations on employee participation in the future. The Supervisory Board in the SE is to consist of 20 members in total. The company management offers 7 seats on the Supervisory Board to employees. The deputy chair of the Supervisory Board is to come from the employer's camp. The special negotiating body rejects these proposals and demands that the Supervisory Board be composed as previously in A-Stahl AG. Negotiations on the agreement on employee participation in the future SE



break down. No agreement is reached even within the extended negotiation period.

Result: for the employees of the future SE nothing changes; the old participation rule which applied in A-Stahl AG remains in place.

## **SE by transformation**

### **Example II**

#### **Example 2:**

B-Stahl PLC, whose registered offices are in Leeds, UK, with a subsidiary in Germany for the past 4 years, decides to transform into an SE. Under UK law, there is no participation in B-Stahl PLC in Leeds. The special negotiating body calls for an agreement on employee participation. No agreement is reached even within the extended one-year negotiation period.

Result: for the employees of the future SE nothing changes, there is still no participation, only information and consultation.



## Case 2: Formation by merger

Under Article 17 of the SE Regulation a merger may take place either:

by the procedure for merger by acquisition laid down in Article 3(1) of the Third Council Directive (78/855/EEC)<sup>5</sup>

*or*

by the procedure for merger by the formation of a new company laid down in Article 4(1) of the same directive.<sup>6</sup>

The "merger case" is made more complicated than it should be by the reference to Directive 78/855/EEC. However, the last paragraph of Article 17 of the Council Regulation explains briefly what is meant.

In the case of a merger by acquisition (where the acquired company or companies "merge" into the acquiring company), the acquiring company takes the form of an SE when the merger takes place.

In the case of a merger by the formation of a new company (where existing companies all "merge" into the new entity), the SE is the newly formed company.

The standard rules of part 3 (participation) only apply in these merger cases where:

- before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25% of the total number of employees in all the participating companies;

or where

- before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25% of the total number of employees in all the participating companies, if the special negotiating body so decides.

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<sup>5</sup> Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies, amended in 1994; Article 3(1) reads: "For the purposes of this Directive, "merger by acquisition" shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value."

<sup>6</sup> Article 4 (1) of Directive 78/855/EEC reads: "For the purposes of this Directive, "merger by the formation of a new company" shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value."



## SE by merger Example III

### Example 3:

The companies A-Chemie and B-Chemie intend to merge to form an SE to be known as AB-Chemie. A-Chemie, whose registered offices are in London, UK, employs 7400 people; there is no participation. B-Chemie, whose registered offices are in Rotterdam, Netherlands, employs 2600 people; there is participation. The special negotiating body calls for employees in the future SE AB-Chemie to be given rights of participation. The company management rejects this, arguing that most employees, namely those in England, did not previously have participation and that the majority is decisive. Negotiations fail to reach an agreement. The formation of SE AB-Chemie, however, shall go ahead.

**Result:** Since the 2600 employees in the Netherlands previously had participation and these 2600 employees represent 26% of the total number of employees of the future SE AB-Chemie (UK: 7400 employees + Netherlands: 2600 employees = 10 000 employees in the SE, of whom 2600 = 26%), the standard rules for participation shall apply.

## SE by merger Example IV

### Example 4:

The companies A-Chemie and B-Chemie wish to merge to form an SE to be known as AB-Chemie. A-Chemie, whose registered offices are in London, UK, employs 7400 people; there is no participation. B-Chemie, whose registered offices are in Rotterdam, Netherlands, employs 2000 people; there is participation. The special negotiating body calls for employees in the future SE AB-Chemie to be given rights of participation. The company management rejects this, arguing that most employees, namely those in England, did not previously have participation and that the majority is decisive. Negotiations on an agreement break down. The formation of SE AB-Chemie, however, goes ahead.

**Result:** although 2000 employees in the Netherlands previously had participation, they only represent 21% of the total number of employees in the future SE (GB: 7400 employees + Netherlands: 2000 employees = 9400 employees in the SE, of whom 2000 = 21%). Therefore, the standard rules for participation do not automatically apply. The SNB has to take a decision on the application of the standard rules. This decision has to be taken with an absolute majority of the votes, representing the absolute majority of the employees (in our case 4.701)

However:



whether or not the standard rules in part 3 apply at all in merger cases is left to the discretion of Member States. Under Article 7(3) of the SE Directive, Member States may in principle opt not to apply this part of the Directive (namely, the provisions relating to mergers) ("opting-out"<sup>7</sup>).

### **Case 3: SE through the foundation of a holding SE or a subsidiary SE**

Article 32, in conjunction with Article 2(2) of the proposal for an SE Regulation, provides that public limited liability companies and private limited companies having their registered office and principal place of business in the Community and established under the legislation of a Member State may form a holding SE where at least two of those companies

- are governed by the law of different Member States

*or*

- have a subsidiary company or a branch established in another Member State

In accordance with Article 35 in conjunction with Article 2(3) of the proposed SE Regulation, companies within the meaning of Article 48(2) of the Treaty<sup>8</sup> that have their registered office and their principal place of business in the Community and are established under the law of one of the Member States may constitute a subsidiary SE by subscribing for its shares where at least two of them:

- are governed by the law of a different Member State

*or*

- have had a subsidiary company or a branch established in another Member State for at least two years.

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<sup>7</sup> See ETUC working paper N° 2/2 of 19.10.2001.

<sup>8</sup> The reference is to the Treaty establishing the European Community. Article 48(2) of the Treaty refers to "companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making." A firm constituted under civil law is an association of at least two persons (partners) established on the basis of a contract for the pursuit of a common purpose. Companies constituted under commercial law include: public limited companies, private (limited) companies, limited partnerships, partnerships limited by shares as well as general partnerships; other legal persons under private law such as registered associations, private law foundations; public law entities such as establishments, public corporations, public law foundations (for further details see *Creisfeld*, Legal Dictionary, 13<sup>th</sup> Edition 1996).



Apart from the legal form of the participating companies, the conditions to be satisfied for the formation of an SE Holding and an SE subsidiary are the same.

In accordance with Article 7(2)(c) of the SE Directive, part 3 of the standard rules (participation) is applicable in respect of the subsidiary SE where:

- before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50% of the total number of employees in all the participating companies;

or where

- before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 50% of the total number of employees in all the participating companies and if the special negotiating body so decides.

## **Holding SE Example V**

### **Example 5:**

A-Food plc, with registered office in Munich, Germany, and B-Food plc, with registered office in Copenhagen, Denmark, and C-Food plc, with registered office in Barcelona, Spain, decide to join up in an SE Holding to be established in Madrid, Spain. A-Food plc in Germany and B-Food plc in Denmark have provisions for employee participation; C-Food in Spain has none. The SE Holding has a total of 20'000 employees, of which 6000 in Germany (A-Food plc), 6000 in Denmark (B-Food plc) and 8000 in Spain (C-Food plc). Negotiations between the SNB and management concerning employee participation in the SE Holding break down.

**Result:** since over 50% of the employees of the future SE Holding already had participation rights (D = 6000 + DK = 6000 = 12000 employees with participation rights being 60% of the total workforce of 20'000 employees), the standard rules on participation will be applicable to the SE Holding. The fact that C-Food plc in Spain had no provisions for employee participation makes no difference.



## Holding SE Example VI

### Example 6:

A-Food plc, with registered office in Munich, Germany, and B-Food plc, with registered office in Copenhagen, Denmark, and C-Food plc, with registered office in Barcelona, Spain, decide to join up in an SE Holding to be established in Madrid, Spain. A-Food plc in Germany and B-Food plc in Denmark already has provisions for employee participation; C-Food in Spain has none. The SE Holding has a total of 20'000 employees, of which 3000 in Germany (A-Food plc), 4000 in Denmark (B-Food plc) and 13000 in Spain (C-Food plc). Negotiations between the SNB and management concerning an agreement on employee participation in the SE Holding break down.

Result: since less than 50 % of the employees of the future SE Holding already had participation rights ( $D = 3000 + DK = 4000 = 7000$  employees with participation rights, being 35% out of a total of 20'000 employees), the standard rules for employee participation will not be automatically applicable to the SE Holding. For those rules to apply, the SNB must pass a resolution to that effect with an absolute majority of the votes, representing the absolute majority of the employees (in our case 10.001 employees).

## Subsidiary SE Example VII

### Example 7:

Public limited company A, with its principal place of business in the UK and 5000 employees, and public limited company B, with its principal place of business in Germany and 5000 employees, wish to establish a subsidiary SE in Luxemburg. The employees in company B in Germany have participation rights, those in company A in the UK do not. Nevertheless, the standard rules on participation will apply in respect of the Luxemburg subsidiary SE, since at least 50% of the employees already had participation rights (namely, the 5000 employees in Germany representing 50% of a total of 10'000 employees in the subsidiary SE).

## Subsidiary SE Example VIII

### Example 8:

Public limited company A in the UK employs 6000 employees, public limited company B in Germany employs 4000. The two companies wish to



set up a subsidiary SE in Spain. The employees in the UK have no participation rights, those in Germany do. Nevertheless, the standard rules on participation will not be automatically applicable to the subsidiary SE since the 50% threshold is not attained (4000 employees in Germany represent only 40 % of the total 10'000 employees in the future subsidiary SE). For the standard rules to apply, the SNB must adopt a corresponding decision with an absolute majority of its members representing the absolute majority of the employees (in our case 5.001)

Where there is more than one form of participation in the companies involved, the special negotiating body is entitled to decide which form of participation shall apply to the SE (Article 7(2), last subparagraph, of the SE Directive). The special negotiating body must communicate that decision to the competent body of the companies (company management, for example).

The Member States may adopt rules establishing which form of participation is to apply if there are several forms of participation in the companies involved and the special negotiating body fails to take a decision in that regard.

## II.

### **What is the content of the standard rules?**

Having examined the conditions for application of the standard rules in section I above, we shall now briefly consider, and comment where necessary, the content of parts 2 and 3 of the standard rules:

#### Part 2: Standard rules for information and consultation

The competence and powers of the representative body established in an SE are governed by the following rules:

- (a) The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.



- (b) Without prejudice to meetings held pursuant to point (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects. The local managements shall be informed accordingly.

The competent organ of the SE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

ETUC comment: this rule is designed to ensure that there is regular and comprehensive prior information and that the employees' representative body is heard at least once a year on those matters. The representative body must be regularly informed, ie. even outside the context of the once-yearly meeting with the competent body of the SE. The competent body of the SE is obliged to provide the representative body with regular reports on the progress of business and its prospects, not just in anticipation of the joint meeting. Moreover, the representative body is to be provided with the agenda of all Board meetings so that it may, if need be, ask questions or request further reports and documents on the progress of the SE's business. These legal provisions should not be undercut in negotiations on an agreement.

- (c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request, the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement.



In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

The meetings referred to above shall not affect the prerogatives of the competent organ.

ETUC comment: the word "particularly" in the first paragraph shows that, in addition to the circumstances listed by way of example, there are other circumstances affecting the employees' interests to a considerable extent which entitle the representative body to information and consultation. For the representative body to be entitled to be informed and consulted by the competent body of the SE, a measure need only have a considerable effect on employees' interests. It is important for the representative body to apply **immediately for information and consultation** as soon as even a rumour comes to its ears of plans likely to have a considerable effect on the company's employees. When the conditions of paragraph 2 are met, the representative body must always make use of its right to a second meeting with a view to attaining an agreement in the employees' favour. When should the information and consultation meeting in the context of exceptional circumstances take place? Part 2, paragraph c) of the standard rules does not say. Here, Article 2(i) and (j) of the SE Directive applies and provides that the time, manner and content of information and consultation must be such as to allow the employees' representatives to express an opinion on the measures **envisaged** which may be taken into account in the decision-making process. The competent body of the SE must, therefore, promptly convene a meeting with the employee representative body as soon as the representative body applies for information and consultation. How often can a representative body rely on exceptional circumstances affecting employees' interests to a considerable extent in order to call for a meeting? The SE Directive is flexible in this regard, avoiding any set rules. How often meetings for information and consultation are held depends on how often the competent body envisages measures affecting employees' interests to a considerable extent.

- (d) Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with the third subparagraph of paragraph (c), shall be entitled to meet without the representatives of the competent organ being present.

ETUC comment: paragraph (d) corresponds to the provision in the EWC directive which, in accordance with French tradition and law, allows the



chief executive of a company to chair meetings between the EWC and central management. Accordingly, the chief executive should also have the right to chair meetings between the employees' representative body and the competent body. His competence is restricted to chairing the meeting, he is not a member of the employees' representative body. The representative body is entitled to meet alone, without representatives of the competent body, before meetings with the competent body.

- (e) Without prejudice to Article 8, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

ETUC comment: this rule means that the members of the representative body have the right and the obligation to inform all employee representatives of the SE, including therefore also the (local) employee representatives in the SE's subsidiaries and plants, of the content and outcome of the information and consultation procedures.

- (f) The representative body or the select committee may be assisted by experts of its choice.

ETUC comment: it is crucial that the employee representative body select its own experts, if need be with the assistance of the trade union, rather than letting company management "talk them into" any particular choice.

- (g) Insofar as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.

ETUC comment: this possibility absolutely must be taken.

- (h) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.



ETUC comment: this ensures that the SE makes the necessary means available to the representative body for its work.

### **Part 3: Standard Rules for Participation**

Employee participation in an SE shall be governed by the following provisions:

- (a) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. Point (b) shall apply *mutatis mutandis* to that end.

ETUC comment: here it is again clearly stated that in the case of an SE established by transformation, if there was participation before it is to continue.<sup>9</sup>

- (b) In other cases of the establishing of an SE, the employees of the SE, its subsidiaries and establishments and /or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation.

ETUC comment: in addition to laying down election rules, this paragraph confirms the principle that can already be inferred from the conditions for application of the standard rules on participation, namely that employee participation must already have existed in at least one of the undertakings involved.<sup>10</sup>

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

<sup>9</sup> See section I, part 3, case 1 at page ... above.

<sup>10</sup> See section I, part 3, case 2 (merger) and case 3 (Holding/subsidiary)



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.

ETUC comment: the representative body of the SE decides how the seats which employees are entitled to within the supervisory or administrative body are allocated. The seats must be allocated "according to the proportion of the SE's employees in each Member State". Seats are not allocated so that each country where the SE is established has at least one employee representative within the administrative or supervisory body. Allocation is "according to the proportion of the SE's employees (...)". If the employees of one or more Member States are not covered by this proportionality rule, for example because there are not enough "employee" seats on the administrative or supervisory body, "the representative body shall appoint a member from one of those Member States". The representative body allocates the seats to which employees are entitled within the administrative or supervisory body firstly following the proportionality criterion. Once that is done, the representative body checks whether all countries where the SE has employees have a representative within the administrative or supervisory body. If that is not the case, **one** seat is allocated to **one** of those countries. That seat cannot be an additional seat since the number of seats which employees are entitled to have within the administrative or supervisory body is set by agreement between the special negotiating body and the SE-founders. The original allocation following the proportionality criterion has to be adjusted and a representative taken away from another country. That representative should come "in particular (from) the Member State of the SE's registered office where that is appropriate". If that Member State already has a representative, for example because the SE has many employees in that country, the seat will be allocated otherwise.

Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including right to vote. Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including right to vote.

ETUC comment: this paragraph stresses the important fact that within the administrative or supervisory body, employee representatives are on an equal footing with members representing the shareholders.

Standard rules on participation in the SE are the transposing of national rules to the European level. The ETUC would have preferred a generous



European regulation of employee participation, in line with modern corporate management principles. The ETUC regrets that this is not yet possible.

The ETUC regrets even more that there will be cases in the future where employees seek to negotiate participation, SE founders refuse and standard rules will still not apply simply because there was no employee participation before the SE was registered. The ETUC considers it regrettable that the legislative should thus have consecrated obsolete management methods.

Nevertheless, while the standard rules on participation are far from ideal, the ETUC can still ("still" being the operative word) work with them.

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