



**Working paper No. 6  
the European Company (SE)  
Agreement on worker  
involvement  
As at 20.03.2002**

**The European Company (SE)  
The Special Negotiating Body and  
negotiations on the conclusion of an agreement  
Information, consultation and participation of workers**

In working paper N° 3 of March 2001, it was already stated that the management of every company intending to form an SE must approach its employee representatives to have a special negotiating body (SNB) set up. The same paper also gave examples of the composition of SNBs. Furthermore, working paper N° 3 gave an overview of the minimum content of agreements on information and consultation and explained what applies in case an agreement on participation. is concluded.

This working paper can and ought to form only a basis and support for preparing negotiations. The SNB only has 6 months or – if that period is extended by agreement with management – one year to conclude an agreement on information, consultation and participation (see under "Negotiation Schedule" in working paper N° 3).

**Thorough preparation**

The SNB must, therefore, prepare for the negotiations thoroughly. It must accordingly ensure that management allows it sufficient time for internal preparation. The SNB can prepare either by meeting on an ongoing basis over a relatively long period (for example 1 week or more) or by meeting very frequently during a specified period (2 to 3 meetings a week over a 2 to 3 month period, for example). It is quite possible that company management may deduct this preparation time from the negotiation period, meaning that there will be less time left for negotiations with company management. Proper preparation is absolutely necessary and will save the SNB considerable time in the course of negotiations. However, the SNB should not immediately accept what management attempts to do, but should always try to agree with company management that the time for preparation will not be deducted. Should



company management not agree, the SNB should calmly consider whether it should insist on taking the necessary time for its internal preparation, and accept the deduction in order to arrive fully prepared at the negotiating table. In return, the SNB could, for example insist on many negotiation meetings with management. The most appropriate procedure requires careful consideration.

### **Own draft of agreement**

With the help of experts, the SNB should use the preparation time to word its own draft of an agreement on information, consultation and participation which should serve as the basis for negotiations with company management. Negotiating on the basis of an own draft has the advantage of allowing the SNB to decide what is to be negotiated. Negotiations based on a management draft often contain a built-in limitation since company management generally has an interest in having the lowest possible level of employee involvement: management's draft will reflect that. This has been the experience of EWCs. An own draft also has the advantage that the SNB is fully involved in the overall work of drawing up the draft, and can, where necessary, react to and express its opinion on management reasoning. At the same time, being fully involved guarantees a certain level of security in the negotiations because you know exactly what is happening and what you want to achieve.

### **Experts**

SNBs should insist unconditionally on their right to be assisted by experts of their choice, even during the preparatory phase (see working paper N° 3, under "Experts to assist the SNB"). Often one expert will not be enough. Precisely when dealing with participation rules, a legal expert may be required. SNBs should insist on calling in the experts to which they are entitled and should not let management "meddle" with their choice. Under no circumstances should an SNB allow management to "provide" experts. Experience with EWCs and Article 13 agreements shows that such "support" from company management should be rejected. Trade unions themselves can provide qualified experts or assist in finding qualified experts who are independent of companies.

### **Content of draft agreement**

The content of the draft agreement should not merely reflect the minimum content set out in the Directive. Involvement rights should be so defined as to truly meet employees' needs.

Accordingly, the agreement should always provide that the employees' representative body within the SE can meet on its own several times a year. Even if there are 2 or more meetings per year with company management and the representative body is entitled to meet on its own before and afterwards, additional meetings of the representative body are necessary. Only thus can employee involvement be effectively secured. EWC experience shows this. SNBs would be well-advised to keep an eye



on the standard rules in formulating their drafts. Drafts should, however, always go beyond the content of the standard rules – in no case should they fall short of the standard rules.

### **Breaking-off negotiations?**

SNBs must face the fact that there are companies whose managements will adopt negotiating tactics aimed where possible<sup>1</sup> at "forcing" the SNB to take a decision under Article 3(6) of the Directive to break off negotiations (or not to open them in the first place). In working paper N° 5 of 25.06.01, it was already stated that the adoption of such a decision means that not even the standard rules on "Information and Consultation" will apply. Therefore, the SE will have no employee representative body and the EWC Directive will apply (see working paper N° 4 of 16.03.2001). Clearly, where an EWC agreement confers relatively few rights on the EWC, it will be in management's interest to have an EWC representing employees.

It is imperative that the participation rights of employees representatives on the supervisory board or board of directors should be taken into consideration, something which does not actually feature in the EWC Directive. Employee participation in the SE is a right which should be achieved in any case<sup>2</sup>. The renunciation of an agreement in conjunction with the breaking off of negotiations always implies the renunciation of employee participation at the level of the undertaking.

### **Notes on the negotiations**

EWC experience shows that notes should be kept of the discussions and arguments and that SNBs should not just rely on the minutes prepared by company management. Experience in the context of EWCs shows that the EWC and company management often have different interpretations of the true meaning behind a particular – equivocal – wording. In that case, notes of the individual points made during negotiations can be most helpful in resolving subsequent disagreements. Maybe someone can be found within the SNB to keep as thorough a record as possible of the negotiations. SNB notes should in any event be passed on to the representative body for safekeeping in a separate file. The notes can be incorporated into a joint SNB negotiations protocol and each individual could be given a copy.

### **Some general comments on the "sample agreement"**

The Directive was adopted on 8 October 2001. At a colloquium in Paris in September 2001, Mrs Blanquet, the representative from DG Single

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<sup>1</sup> This is not possible in the case of a transformation if there was previously participation: see working paper N° 5, end of Part 3.

<sup>2</sup> The ETUC congress 1988 in Stockholm already acknowledged the importance of participation of employees.



market, explained that a company had already expressed an interest in setting up an SE. This demonstrates that employee representatives must acquaint themselves with the subject matter in good time. The following sample agreement should in view of the short negotiation period already serve as a basis for discussion and help for an agreement. Of course, it remains to be seen how individual Member States will transpose the Directive. In preparing draft agreements, SNBs must in any event take the transposition legislation into account. The sample below is simply a framework which must be examined on a case-by-case basis to determine whether or not it applies in the specific circumstances and what can be taken over, and what not. In each case, it must be considered whether additions are required. Employee representatives should always deal in good time with questions and resulting issues which are brought before them, and not wait until the Re/SE and Dir/SE have been transposed into national law. Discussions held by companies bear out that they are already devoting considerable attention to the matter. This in turn demonstrates how important it is that employees and their representatives also give this matter their attention.

The importance of always submitting own drafts to company management and negotiating on that basis must again be stressed. Needless to say, compromises will often have to be accepted. However, SNBs must always be careful to ensure that the fundamental rights and interests of the future representative body of employees within the SE are not overridden. Reference is made to article 12 (3) of the regulation on the SE statute. It follows that the agreement must also contain rules for participation<sup>3</sup>.

The following draft agreement shows that the matters about which the representative body must be informed and consulted coincide partially with the scope of participation in the supervisory board. In view of the various functions of the body, this overlap is unavoidable and necessary.

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<sup>3</sup> Even if there were previously no participation in any of the companies involved, the SNB should push through participation rights in an agreement; in all other cases, rules for participation have to be included in the agreement anyway.



## SAMPLE AGREEMENT/ Basis for discussion

in accordance with Article 4 of Council Directive 2001/86/EG supplementing the Statute for a European Company relating to the involvement of employees, in conjunction with .....<sup>4</sup>

The companies ..... represented by  
..... registered  
offices:.....<sup>5</sup>

and

the Special Negotiating Body, composed of the following members  
.....<sup>6</sup>

have concluded the present Agreement in accordance with Article 4 of the Council Directive supplementing the Statute for a European Company with regard to the involvement of the employees of..... in conjunction with the implementing legislation of ..... of .....<sup>7</sup>:

The European Company is hereinafter referred to as the "SE". The competent body of the SE is hereinafter referred to as "company management".

### Preamble<sup>8</sup>

Whereas, by common consent, the parties have concluded this Agreement with a view to guaranteeing employee involvement through their representative body, including participation of employee representatives on the supervisory council and administrative board<sup>9</sup> in the form of open

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<sup>4</sup> The title and date of the national transposition legislation must be inserted here; should the agreement already be concluded beforehand, this does not of course apply.

<sup>5</sup> Insert the precise name (and address) of the participating companies and indicate exactly by which body they are represented.

<sup>6</sup> Insert the full names and addresses of the SNB representatives of the companies, and details of which company/company they come from; this will simplify future questions on particular aspects of the agreement since everyone will know whom to contact.

<sup>7</sup> The national provision corresponding to article 4 of the Directive should be specified as well as the title and date of the transposition legislation.

<sup>8</sup> The preamble contains the motives and intentions underlying an agreement.

<sup>9</sup> Delete whichever does not apply depending on whether it is a supervisory council or an administrative board.



co-operation between the employees' representative body and company management;

Whereas this Agreement also seeks to ensure co-operation between employees' representatives and employers' representatives at all levels within all SE subsidiaries and establishments;

Whereas good co-operation at a European scale between employers and employees' representatives, the timely information and consultation of employees and their representatives, as well as employee participation in the decision-making process at company level promotes the Community-wide success of a company;

## 1. Scope of Agreement

This Agreement covers ..... and applies to all employees in those subsidiaries and establishments<sup>10</sup>.

The companies covered by this Agreement at the date of signing are listed in annex 1, which forms an integral part of this Agreement. That list also indicates the number of employees per subsidiary and establishment. The responsible body (the management) of the SE shall update this list on an ongoing basis, taking into account developments in the individual establishments, including any enlargements resulting from mergers, acquisitions or similar events. Without being asked, the management of the SE shall communicate this list as soon as it is issued to the representative body.

## 2. The employees' representative body

### 2.1. Composition and election of the representative body

The representative body is composed of .....members.<sup>11</sup> The representative body shall be elected by secret ballot and exclusively from company employees.

It is located at SE company management level. The exact composition is set out in the second list in annex 2 which forms an integral part hereof and which shall be constantly updated.<sup>12</sup>

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<sup>10</sup> Article 4 of the Directive establishes that the scope of the agreement must be determined. According to the standard rules (see part 2 of the standard rules for information and consultation) the employees' representative body is responsible for the business of the SE alone, one of its subsidiaries or businesses in another member state. Each SNB should give close consideration as to whether it is sensible to extend this scope, for example to include companies and businesses based in candidate countries.

<sup>11</sup> In this regard we must wait and see whether member states lay down rules on the election, composition and number of members of the representative body which also apply in the case of an agreement: if that is not the case, the SNB should carefully consider the body's composition; the conditions mentioned in part 1 of the standard rules could be a point of reference. EWC experience should also be taken into consideration and where possible SNBs must avoid allowing any single (national) group to act as sole driving force in the representative body.

<sup>12</sup> See also article 4 (2) b) of the Directive.



Full-time trade union representatives can be members of the employees' representative body.<sup>13</sup>

Deputy representatives shall be elected.<sup>14</sup>

Election of the employees' representatives and their deputies shall start no later than 2 weeks after signing this Agreement in accordance with national legislation.<sup>15</sup>

## **2.2. Communication of election results**

No later than one week after the elections, company management shall draw up a list of the members (full name, address, plant/establishment, telephone number, fax number and e-mail address) elected to the representative body and their respective deputies (full name, address, plant/establishment, telephone number, fax number and e-mail address).

The company management shall promptly communicate a copy of this list to each member of the employees' representative body and to each employee representation at national level (or, in absence of employee representatives, to the *employees* directly). Moreover, company management shall remit a copy of this list to each subsidiary and establishment.

## **2.3. Term of office**

Membership of the representative body runs for 6 years<sup>16</sup>. Calculating the 6 years is the same for all members, namely from the date of constitution. A new election must be held in good time before the expiry of the current 6-year period. All costs in connection with this are to be borne by the SE. The current representative body remains in office until the constitution of the newly elected representative body, in order to guarantee continued representation.

If a member resigns his office or leaves the company, then his period of office as a member of the representative body ends before the 6 years

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<sup>13</sup> It has to be expected that some member states have adopted legal provisions to this effect at national level; SNBs should in any event take into account in the agreement that trade union representatives are members of the representative body.

<sup>14</sup> Here again, it remains to be seen whether member states will lay down rules that apply in the case of an agreement; if not SNBs should elaborate their own rules.

<sup>15</sup> Where national rules do not regulate for the case of an agreement, there should be provision for elections to be held as soon as possible, and also in view of the fact that the election process itself takes quite some time. Election procedures – candidates, secret ballot, etc. – must also be set out.

<sup>16</sup> Whether a term of office is determined and of what length therefore has to be considered, because employees' representatives on the supervisory board may possibly have a longer or uncertain period of office; in this respect, we have to await national transposition legislation. According to the Dir/SE a period of office of 6 years on the supervisory board or board of directors is possible.



are up. The deputy serves in the place of the member who has resigned for the remainder of the term.

#### **2.4 First meeting / Constitution / Preparations for the election of employee representatives to the supervisory board / board of directors<sup>17</sup>.**

The representative body shall meet no later than one month after the election results are communicated in accordance with article 2.2 above, starting from the date the list is issued. The meeting shall last at least three days and shall be held in an appropriate conference room at SE headquarters; only members of the representative body may attend. The SE shall bear the costs for the necessary interpreters, who shall be independent and bound to professional secrecy, as well as all other costs incurred by the representative body and its individual members in connection with this meeting.

This meeting shall serve

-to constitute the body

to allow members to become acquainted with one another

-to resolve and determine organisational issues for the representative body (election of chairman and deputy chairman, , rules for the succession of deputy members, etc.)

In addition the election of employees to the supervisory council / administrative board shall be arranged in detail. These will be elected by the representative body (see figure 4.1). To this end, the representative body shall decide on the allocation of seats according to the proportion of SE employees in individual member states<sup>18</sup>.

#### **2.5. Resolutions**

The representative body decides by passing resolutions. Each member is entitled to one vote.<sup>19</sup> Resolutions are adopted by a simple majority of the members present. In the event of a tied vote, the proposal shall be deemed rejected.

#### **2.6. Rules of procedure/steering committees /committees**

The representative body may adopt rules of procedure.

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<sup>17</sup> Delete whichever does not apply.

<sup>18</sup> see also part 3 of the Directive: standard rules for participation. There are other possible models for the election of employee representatives to the supervisory board or board of directors: for instance, election by the employees (either by direct and secret ballot or by indirect election amongst female and male candidates). Care must be exercised to ensure that the election is run as simply and unbureaucratically as possible for the employees.

<sup>19</sup> It is also possible to allocate to each member a number of votes equal to the number of employees in the company he represents. If this weighting system is chosen, the number of employees represented by each member must be determined and a reference date set. The method guaranteeing the best co-operation within the representative body should be chosen.



From within its membership it may set up a steering committee of ..... people. This steering committee manages the day-to-day work of the representative body. For the duration of their term of office the members of the steering committee are released from their normal job and continue to receive their wages. They should not suffer any disadvantage during this period<sup>20</sup>.

The representative body is entitled to set up additional committees<sup>21</sup> and entrust them with certain tasks.

It shall inform company management of the composition and tasks of the committees. Management shall pass on that information to the subsidiaries and establishments, instructing them to release the committee members from their work obligations on full wages for the duration of the committee's work. Article 2.14. of this Agreement is also applicable.

### **2.7. Adapting the representative body**

The number of seats on the representative body and the committees shall be adapted in line with structural changes of the SE, its subsidiaries and establishments. If new subsidiaries and establishments are added, additional members and deputies shall be elected in accordance with the above provisions to represent the new subsidiaries and establishments. Notwithstanding, these members' term of office shall not overstep the 4 year term starting from the first meeting referred to in Article 2.4 above. On expiry of the 4 year period, new elections shall be held in all sectors throughout the SE<sup>22</sup>.

### **2.8. Meetings of the representative body**

The representative body shall meet regularly for internal exchanges of information and deliberation. These internal meetings shall take place at least 4 times<sup>23</sup> a year, or more often if at least half the members so require. The meetings shall be held by rotation at the individual subsidiaries and establishments and shall last at least one day, or longer if need be. The representative body may invite local employee

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<sup>20</sup> It is imperative that a steering committee, or at least one person is nominated to manage the day-to-day work of the representative body. This person/These persons may not be disadvantaged in any way as a result of being released to do this task, that is to say, they must receive the same wage increases as any other employee; at the end of this period they must receive any training they may require (for example relating to new technical developments in their job, etc.) Detailed rules may have to be drawn up to deal with this.

<sup>21</sup> There should in any event be provision for setting up additional committees, for example, health and safety, and committees for special economic and other matters. Setting up committees can certainly make sense in terms of effectiveness. The exchange of information and experience between committees and the representative body as a whole is crucial. That can be provided for in the rules of procedure, for example.

<sup>22</sup> see Fn 15

<sup>23</sup> Careful consideration must be given as to whether this is sufficient. If need be, the number of internal meetings may be increased.



representatives as well as employee representatives from any other plants and establishments concerned to attend the meetings. In that case, the SE and the subsidiaries and establishments in question shall release the employees' representatives without reduction in pay or holiday entitlements and shall bear their travel, accommodation and other expenses arising in connection with their participation in the meetings.

### **2.9. Experts**

The representative body is entitled to the support of at least one external expert on a permanent basis. The expert may attend all meetings of the representative body and its committees, including meetings with company management. Where necessary, the representative body can call in further external experts to assist it with its work. Additional experts are needed, for example, where the representative body lacks the necessary expertise. The use of legal and economic experts is always regarded as being necessary.

### **2.10. Co-operation with trade unions**

The representative body shall co-operate with all trade unions represented within the SE and its subsidiaries and establishments. The representative body may at any time during working hours and without reduction in wages or holiday entitlements contact trade union representatives personally or via the company's telecommunications systems without interference and invite the latter to meetings concerning participation.

### **2.11. Training**

Representative body members are entitled to attend educational and further training courses and conferences, provided the training conveys knowledge that is necessary for the representative body's work. Are deemed necessary to its work: foreign language skills<sup>24</sup>, collective bargaining law, the national laws of employee representatives at all levels of an company, national and European labour law and the commercial law of all the countries covered by this Agreement.

The preceding paragraph does not preclude the representative body's right to call in experts, interpreters and translation services.

### **2.12. Information/Secrecy**

The representative body shall pass on the information obtained in the framework of its activities to the national employee representatives at their headquarters. Where necessary, it may consult national employee representatives concerning the necessary measures or provide them with support.

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<sup>24</sup> This claim might lead company management to refuse to provide interpreters. The next paragraph is therefore essential.



Members and deputy members of the representative body shall not disclose to third parties any business secrets expressly qualified as such which are divulged to them by the SE. That applies even after membership in the representative body ends.

The secrecy obligation shall not apply within the representative body, or vis-à-vis employee representatives in the establishments, employee representatives sitting on the supervisory councils/ administrative boards of the SE or national supervisory councils / administrative boards of directors<sup>25,26</sup>, in the context of legal or arbitration proceedings or vis-à-vis experts assisting the representative body.

### **2.13. Right of access**

The representative body and its individual members shall have access to each individual subsidiary and establishment. The management of the SE shall instruct the management of subsidiaries and establishments accordingly in order to ensure that such access can be exercised without impediment. That applies also to the representative body's experts and trade union representatives.

### **2.14. Costs**

Company management shall provide the representative body and its committees with all the necessary financial and material means. That includes, in addition to the costs arising in connection with the constitution of the representative body, the cost of meetings, interpretation and translation costs, travel and accommodation expenses, costs in connection with meetings with trade union representatives and costs for experts *inter alia*. The representative body is free in its choice of experts, translators and interpreters.

### **2.15. Protection for members of the representative body**

The members of the representative body shall not be hindered in their activities. They shall be neither disadvantaged nor favoured on account of their function as members of the representative body. The same applies to their professional career. They are entitled to their wages even when they are absent from work in the exercising of their responsibilities as members of the representative body.

During their term of office *and after* it is complete, members of the representative body can be dismissed only if and to the extent that such dismissal is permissible under national law<sup>27</sup>. In so far as the employee

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<sup>25,26</sup> Delete whichever does not apply.

See article 9 of the Dir/SE which rules specifically on co-operation among all employee representatives. However, co-operation precludes a secrecy obligation, otherwise co-operation cannot take place, because of itself it implies exchange of information.

<sup>27</sup> Where national law provides for no security of tenure after the period in office is complete, consideration should be given as to whether a set term (for example 4 years) should be determined.



concerned so wishes, and if necessary, professional training should be given and the cost thereof borne by the company to avoid any career disadvantage to the employee.

### **3. Information and consultation content and procedure**

#### **3.1. Regular information and consultation**

Independently of its meetings with the representative body, company management shall inform the representative body by means of regular<sup>28</sup> written reports of business progress and the prospects of the SE, the company and establishments, including subjects mentioned in 3.3. To the extent that effects on employees can be foreseen, these are to be explained in detail. Furthermore, there should also be an explanation as to how any possible negative consequences for employees may be prevented or reduced.

#### **3.2. Joint meetings between the responsible body of the SE and the representative body**

Company management and the representative body shall come together at least twice a year<sup>29</sup> in a meeting to consult on all matters of significance to the SE, the company and establishments and their employees.

The representative body is entitled to list the subjects that it regards as being significant. It shall communicate that list to company management at least 4 weeks before the meeting. Where the representative body so requests, company management shall invite management representatives and employee representatives from the subsidiaries and establishments to participate in the meeting.

The location of the meeting shall be decided by mutual agreement between the parties<sup>30</sup>. In absence of such agreement, the meeting shall be held at the seat of the SE.

Preparation for these joint meetings shall be in accordance with the following procedure:

##### **3.2.1.**

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<sup>28</sup> Instead of „regular“, set intervals could be determined, for example „monthly“

<sup>29</sup> On no account should the SNB accept management's argument that one joint meeting per year is sufficient. Rather, it should insist on more than two meetings with company management. EWC experience demonstrates that one meeting per year is too few. Furthermore, it is important that the representative body itself meets more than twice annually, in addition to the above-mentioned meetings; see 2.8.

<sup>30</sup> It is advisable to hold the meetings by rotation among the various companies, since this makes contact with national employee representatives easier. This is absolutely necessary, as EWC experience demonstrates. That the meetings should be held in various individual locations can be included in the agreement.



In accordance with figure 3.2<sup>31</sup>, the responsible body (the management) of the SE shall inform the representative body, comprehensively, in good time and in writing of the items on the agenda (including those proposed by the representative body), appending all necessary documents. This comprehensive and timely information is designed to enable the representative body to discuss the subject-matter internally and without additional research. Thus, for example, the representative body is to be informed about plans from the early stages onward, this to continue on a regular and on-going basis. Furthermore, there should also be an explanation as to how any possible negative consequences for employees may be prevented or reduced.

### 3.2.2.

Before the meeting with the SE, the representative body shall be given sufficient time for internal consultation. For that purpose, it is also entitled to contact national employee representatives or employees in advance of the meetings. The representative body shall issue its opinion in writing on that basis.

### 3.2.3.

Before company management takes a decision or authorises its subsidiaries and establishments to take a decision, the representative body's opinion shall be discussed in a common meeting and company management shall explain to what extent that opinion can be taken into account in current planning or why it is not possible to do so.

The representative body shall be given the opportunity to express its views. At its request, the meeting may be suspended or postponed to allow the representative body to discuss the matter internally or to call in experts and/or trade union representatives for consulting and support through participation at the meeting. If the representative body considers it necessary, it shall be given another opportunity to consult on the spot with national employee representatives.

Should company management decide to implement the measure without taking into account the representative body's opinion, it shall promptly inform the representative body. The representative body shall be entitled to a further meeting with company management with a view to seeking agreement.

## **3.3. Subjects for information and consultation**

Information and consultation concerns the SE, its subsidiaries and establishments (see list in annex 1), in particular<sup>32</sup> with regard to

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<sup>31</sup> Instead of the expression „in good time“, fixed time limits can be set. The best solution is to opt for an arrangement which ensures the optimal organisation of the work of the representative body.

<sup>32</sup> „In particular“ indicates that there can be other topics in addition to those listed.



- the actual and planned corporate structure
- the economic and financial situation
- the anticipated development of the business, production and sales
- the situation and probable trend of employment including equality of women and men
- questions of job and location security
- production and investment plans
- substantial changes in organisation
- introduction of new working methods or production processes
- situation and developments concerning health and safety, environment
- transfer of working range production
- mergers, cut-backs or closures of companies, establishments or important parts thereof
- collective redundancies
- rationalisation measures
- status and development of in-house training of employees
- any other procedures and measures that are liable to affect employees

The parties are agreed that this list is not exhaustive but is merely indicative and that there may be other subjects qualifying for information and consultation in the context of this agreement<sup>33</sup>.

### **3.4. Exceptional circumstances**

Company management shall inform and consult with the representative body promptly in the event of exceptional circumstances affecting the employees' interests. Exceptional circumstances include, in particular, relocations, transfers, the sale and/or closure of companies or establishments or parts thereof, mass redundancies, mergers, take-over rumours et al. „Promptly“ means when a measure is first considered, on first knowledge, when rumours first surface (eg. in the case of unfriendly take-overs) and so on.

In exceptional circumstances, company management shall inform the representative body in writing and in a manner that is sufficiently comprehensive to enable the representative body to deliver its opinion, within a reasonable time-limit and without additional research, at a meeting with company management or at another management level indicated by it. The representative body may call in experts and/or trade union representatives for support. The national employee representatives concerned have the right to participate in the meeting. The representative body is entitled to meet with the experts, trade union representatives and national employee representatives before the meeting. It may also

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<sup>33</sup> This list essentially reflects the enumeration under part 2(b) of the standard rules. It is essential to make it clear that the list is not exhaustive. This point is absolutely crucial.



request that the meeting be interrupted for a reasonable period in order to consult with the experts, trade union representatives and national employee representatives.

In circumstances of exceptional urgency requiring to be dealt with without delay, information and consultation may be undertaken verbally at the meeting. The representative body shall be given enough time for internal discussion and to form an opinion. Before delivering its opinion, in this case orally, the representative body shall have the right to consult with experts, trade union representatives and national employee representatives. At the request of the representative body, company management has to prove that a case has come up requiring to be dealt with without delay, and so could not be prepared beforehand in writing.

Where company management decides not to act in accordance with the opinion expressed by the representative body, this latter body shall have the right to a further meeting with company management with a view to seeking agreement<sup>34</sup>.

### **3.5. Implementation of company decisions**

Should planned company decisions have detrimental implications for employees, the representative body, together with national employee representatives, is entitled to seek agreement with company management or its national representatives to reduce the effect of such implications. This entitlement does not apply in cases where a majority of the national representatives, after consultation with the representative body, decides to lead such negotiations alone.

Company management shall not implement or allow to be implemented decisions concerning matters requiring the involvement of the representative body in accordance with the present agreement until the representative body has been thoroughly informed and consulted.

## **4. Participation in the supervisory council<sup>38,39</sup>**

The supervisory council exerts influence<sup>37</sup> in company matters and supervises and controls company management in accordance with the following rules.

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<sup>34</sup> This provision is also in the standard rules; the agreement must not fall short of the standard rules in this regard.

<sup>38,39</sup> According to article 38 of (EG) Regulation No. 2157/2001 of the Council dated 8 October 2001 relating to the statute of the European Company (SE), the rules state whether there is to be a supervisory council or an administrative board. The participation part of this working paper is therefore to be subdivided into supervisory council and administrative board. In the respective texts, reference will therefore be made to either a supervisory council or an administrative board of directors respectively.



#### **4.1 Number and election of members of the supervisory council/chairman and deputy chairman**

The supervisory board shall consist of a total of .... members<sup>38</sup>, half of whom shall be shareowner and half employee representatives<sup>39</sup>. Members of the supervisory council shall not be allowed to be members of the board of directors at the same time. Members of the supervisory council have to be natural persons, independent and competent.

Employee representatives on the supervisory council are elected by the representative body of the SE. Candidates receiving the most votes are elected<sup>40</sup>.

The general meeting shall elect a chairman and deputy from within the supervisory board by secret ballot. Each member of the supervisory board can put himself up for election or may be proposed by other members of the supervisory board. If the chairman is an shareowner representative, then his deputy must be an employee representative. Candidates with the most votes are elected.

Company management shall prepare a list of all members of the supervisory council, broken down according to shareholder and employee representatives (full names, line of business and function) and display this list in an appropriate place in each company and establishment. A copy of this list shall be given to each national management and employee representative.

#### **4.2 Position of employee representatives on the supervisory board**

Employee representatives on the supervisory council shall be full members of the supervisory council with the same rights and obligations as the members representing the shareholders.

Employee representatives on the supervisory council shall be protected from suffering any disadvantage in connection with their period of office on the supervisory council.

#### **4.3 Term of office**

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<sup>37</sup> see article 2 k) of the Dir/SE

<sup>38</sup> As a rule the total number of members of the supervisory council is determined in the statute or in law; see also article 40 (3) of the Re. It remains to be seen whether the member states provide a different size.

<sup>39</sup> This commitment is important and should not be changed in any circumstances unless member states have created binding rules.

<sup>40</sup> It remains to be seen whether member states enact detailed election procedures. Eventually the agreement has to be completed by detailed election procedures; see article 4 g) of the Directive. Other possibilities for election could be considered, namely that employee representatives on the supervisory council or administrative board could be directly or indirectly elected from the employees of the SE and its companies and establishments.



Members of the supervisory council are elected for 6 years. The new election shall be organised in accordance with the above-mentioned regulations (see 4.1). Re-election several times is possible<sup>41</sup>.

Should a member of the supervisory council leave during his 6-year term of office a substitute member is to be elected in accordance with figure 4.1 for the remainder of the term of office.

#### **4.4 Resolutions / Quorum**

The supervisory council decides by means of resolutions. The supervisory board has a quorum only if at least half of the members participate in passing the resolution.

Decisions of the supervisory council require a majority of the votes cast. In the event of a tied vote, another vote shall be held. Should the vote still be tied, then the chairman has two votes.

#### **4.5 Setting up committees**

The supervisory council shall be authorised to set up committees. Committee members shall be elected by majority vote. In contrast to figure 4.4, in the event of a tied vote the chairman does not have a casting vote, rather the request to set up a committee is refused.

#### **4.6 Supervisory council meetings**

The full supervisory council shall meet once a quarter.

Each member of the supervisory council can for a particular purpose or reason request the chairman to call an additional meeting of the supervisory council. Should a member of the supervisory council request such an additional meeting and should this request be turned down by the chairman, then the proposer can communicate the facts of the matter and call the meeting himself.

Minutes shall be taken at each full meeting of the supervisory council and the committees, and each member shall receive a copy within 30 days of the meeting. Any revisions to the minutes shall be forwarded within a further 30 days following receipt and included in the minutes.

Employee representatives on the supervisory council shall be entitled to separate preliminary and subsequent employee discussions. Such discussions do not have to be held immediately before or after the supervisory board meetings. The time and length are at the discretion of the employee representative.

#### **4.7 Expenses for members of the supervisory board**

In addition to their normal salary, members of the supervisory council shall receive expenses for their work amounting to .....EURO, in addition to travel and subsistence costs<sup>42</sup>.

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<sup>41</sup> the statute can provide rules here; see also article 46 of the Regulation.



#### **4.8 Training**

Employee representatives on the supervisory council shall be entitled to have time off for training whilst continuing to receive their salary, and the SE shall bear all training-related costs.

#### **4.9 Duties and rights of the supervisory council**

The supervisory council shall supervise company management. Company management shall inform the supervisory council monthly in writing of the company's operation and position. Management shall present the quarterly written report to the members of the supervisory council at least every 3 months. The report shall contain the following: future company policy and other basic issues relating to company planning (including financial, investment and staff matters) for the SE and its companies and establishments; company profitability (including equity profitability); company's operation (in particular, turnover, position); businesses which could be important for the company's profitability or liquidity.

Alongside this regular information company management shall inform the supervisory council of all events which could have any bearing on the position of the SE and its companies and establishments.

The supervisory council can request all information and documents necessary for the supervision of management<sup>43</sup>. In the exercising of its supervisory and monitoring rights the supervisory council can call on the services of suitable experts. The SE shall bear the cost of these.

The supervisory council shall call a general meeting when this is the wish of the SE.

The employee representatives of the supervisory council shall be entitled to inform the SE representative body, the EWC and national employee representatives and to draw on their views and support.

For their operation the following matters require the prior<sup>44</sup> agreement of the supervisory board<sup>45</sup>:

1. determining the strategic plan for the company
2. determining periodic plans, in particular, investment programmes including investment plans in the fields of research and development<sup>46</sup>,

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<sup>42</sup> Rules relating to this are often laid down in the statute. Should this not be the case, then the expenses allowance should be set in the agreement.

<sup>43</sup> see article 41 of the Regulation

<sup>44</sup> Agreement means, prior as well as later agreement. However, since it can happen that the supervisory board has to give businesses its prior agreement this should be made abundantly clear by emphasising the word „prior“.

<sup>45</sup> The list was taken from the legal manual for supervisory board members in accordance with participation law 76 of the Hans-Böckler Foundation, 2<sup>nd</sup>. Edition, 1990.

determining the annual investment contingency, determining the revenue and cost-planning, production, sales and turnover planning.

3. Individual matters that are significant, in particular expansion of the production and/or service programme, mergers, restructurings, splitting up, setting up and dissolving companies, subsidiaries and branches, take-overs or disposal of long-term holdings to other companies, acquisition and disposal of stocks and shares of other companies from ....Euro<sup>47</sup>, assigning functions within the group, completion, termination and alteration of contracts, acquisition, disposal or cost of property, property rights and rights to properties individually exceeding a value of .....Euro, taking out loans and credits the term of which exceeds one year or the amount of which exceeds .....Euro in individual cases, providing securities and guarantees, the amount of which exceeds ..... Euro in individual cases, guaranteeing loans and other credit, the amount of which exceeds ..... Euro in individual cases, investments outside the investment programme approved by the supervisory board, in so far as they do not constitute current business expenses and their value does not exceed....Euro in the financial year, appointing and dismissing employees earning in excess of .....Euro monthly<sup>48</sup> and other similar job contracts, granting and revoking power of attorney, hiring and firing of more than ..... employees<sup>49</sup>placing orders with management consultancies<sup>50</sup>, contracts to which the company is committed for more than one year, and contracts outwith the normal business activity with companies engaged in the same kind of production as the company.

#### **4.10 Confidentiality**

The members of the supervisory board are not allowed to communicate, including after the end of their term of office, any such information about the SE, which if circulated, could damage the interests of the company, whether the communication of such information is laid down or permitted in accordance with the rules of national law relating to public liability companies or is in the public interest<sup>51</sup>.

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<sup>46</sup> this phrase is unnecessary if the company does not operate in the research and development field..

<sup>47</sup>here an amount should be determined which is meaningful to the company.

<sup>48</sup> by this rule the supervisory board protects the right of consent in the employment of executives, an important area where employee representatives are influential.

<sup>49</sup> to determine the scale you could refer to the legislation on mass redundancies

<sup>50</sup> such instructions can be an indicator for restructuring plans, and should therefore also require agreement

<sup>51</sup> This rule was taken almost word for word from the Directive, article 49



## *Alternative*

### **4. Participation on the administrative board**<sup>52</sup>

The administrative board manages the company<sup>53</sup>

#### **4.1 Number and election of members of the board of directors**

The administrative board shall consist of a total of ... members<sup>54</sup>, half<sup>55</sup> of whom shall be shareholder representatives and half employee representatives.

Shareholder representatives are appointed by the general meeting.

Employee representatives on the board of directors are elected by the representative body by secret ballot. Candidates receiving the most votes are elected<sup>56</sup>.

The shareholders' general meeting shall elect a chairperson from within the administrative board<sup>57</sup>.

The administrative board shall prepare a list of all its members, broken down according to shareowner and employee representatives (full names, line of business and function) and display this list in an appropriate place in each company and establishment. Furthermore, copy of this list shall be given to each national management and employee representative.

#### **4.2 Position of employee representatives on the administrative board**

Employee representatives on the administrative board shall be full members of the board with the same rights and obligations as the members representing the shareholders.

Employee representatives on the administrative board shall be protected from suffering any disadvantage in connection with their period of office on the board.

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<sup>52</sup> see also article 43-45 of the Regulation.

<sup>53</sup> the administrative board can decide to assign the management of the company to a part of the board of directors or to a managing director. In such a case, the agreement must determine what powers the management has, and what rights of control, refusal and agreement the administrative board has.

<sup>54</sup> according to article 43 (2) of the Regulation, member states can set a minimum or maximum number.

<sup>55</sup> On the boards of directors of national public limited companies, employee representatives often make up only 1/3 of the total members of the board; in the negotiations the representative body should not agree to such a small number.

<sup>56</sup> here also, it remains to be seen whether detailed election procedures are enacted, cf. Fn 30. Other election arrangements are possible, cf. Fn 30.

<sup>57</sup> see article 45 of the Directive; since this agreement starts from the assumption that half of the board of directors are employee representatives, the rule relating to chairperson contained in this draft is necessary.



### **4.3 Term of office**

Members of the administrative board are elected for 6 years. The new election shall be organised in accordance with the above-mentioned regulations (see 4.1). Re-election several times is possible<sup>58</sup>.

Should a member of the administrative board leave during his 6-year term of office a substitute member is to be elected in accordance with figure 4.1 for the remainder of the term of office.

### **4.4 Decisions/ Quorum**

The board of directors takes decisions by means of resolutions. The board of directors has a quorum only if at least half of the members participate in passing the resolution.

Decisions of the supervisory board require a majority of the votes cast. In the event of a tied vote, another vote shall be held. Should the vote still be tied, then the chairman has two votes.

### **4.5 Administrative Board meetings**

The administrative board shall meet once a month<sup>59</sup> for the purposes of advising and establishing the business activities of the company and its future development. The chairperson is responsible for calling meetings.

Each member of the administrative board can for a particular purpose or reason request the chairman to call an additional meeting of the board. Should a member of the board request such an additional meeting and should this request be turned down by the chairman, then the proposer can communicate the facts of the matter and call the board meeting himself.

Minutes shall be taken at each full meeting of the administrative board, and each member of the board shall receive a copy within 30 days of the meeting. Any revisions to the minutes shall be forwarded within a further 50 days following receipt and included in the minutes.

Employee representatives on the administrative board shall be entitled to separate preliminary and subsequent employee discussions. Such discussions do not have to be held immediately before or after the supervisory board meetings. The time and length are at the discretion of the employee representative.

### **4.6 Expenses for members of the administrative board**

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<sup>58</sup> The statute can provide rules here; see also article 46 of the Regulation

<sup>59</sup> Article 44 of the Directive establishes as a fixed regulation that a meeting must take place at least every 3 months. The representative therefore has a certain amount of leeway.



In addition to their normal salary, employee representatives shall receive expenses for their work on the administrative board amounting to .....EURO, in addition to travel and subsistence costs<sup>60</sup>.

#### **4.7 Training**

Employee representatives on the administrative board shall be entitled to have time off for training whilst continuing to receive their salary, and the SE shall bear all the training-related costs. Training should enable employee representatives to be in a position to properly carry out their office.

#### **4.8 Confidentiality**

The members of the administrative board are not allowed to communicate, including after the end of their term of office, any such information about the SE, which if circulated, could damage the interests of the company, whether the communication of such information is laid down or permitted in accordance with the rules of national law relating to public liability companies or is in the public interest<sup>61</sup>.

#### ***Attention:***

***The following regulations apply both to the supervisory council and the administrative board, and should therefore appear in both agreements.***

#### **5. Workplace representatives**

**This agreement shall not intrude upon the already existing employee representations, such as the works council, company works council or group works council or any similar committee.**

#### **6. Loopholes in the rules**

In the event that any loopholes in this agreement come to light, the parties shall undertake to amend the agreement within a month. The relevant regulations from the standard rules shall be used until the loopholes are closed. If the two parties cannot come to any joint agreement, then a group shall be set up comprising one employee representative one shareholder representative and an independent judge from the industrial tribunal, who shall be the chair. This group can lay down a binding rule. Each member has one vote. The chairman has a casting vote<sup>62</sup>.

#### **5. Disputes**

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<sup>60</sup> Rules relating to this are often laid down in the statute. Should this not be the case, the agreement should establish the amount of expenses

<sup>61</sup> This rule is taken almost word for word from article 49 of the Directive.

<sup>62</sup> Various rules could be considered here; if necessary, it might be appropriate to take national arbitration procedures into account.



Differences in opinion between company management and the representative body or the employee representatives on the supervisory council or administrative board <sup>63</sup> regarding the application or interpretation of this Agreement or any part of this Agreement shall be settled as provided for in national legislation<sup>64</sup> on the settlement of disputes.

This Agreement is governed by the law of the country where the SE has its seat.

**7. Duration of the Agreement and its coming into force**

This agreement shall come into force on the day it is signed. It has to be signed by all members of the SNB on the same day and at a joint meeting.

The agreement shall be valid for 6 years and may be extended for a further 6 years; in this event it may be terminated by either party with 6 months notice to.....<sup>65</sup>

In the event of termination, the SE/company management and the representative body shall initiate negotiations with the serious intention of concluding a new agreement within one year of the date the termination becomes effective. The Agreement shall remain in effect until it is superseded by a new agreement.. Should the parties fail to reach an agreement *within one year*, the standard rules shall apply.

Place, Date

<p>For the SE</p> <p><b>Represented by</b></p> <p>.....</p> <p>.....</p> <p><b>et al.</b></p>	<p>signatures of the members of the special negotiating body</p> <p><b>1).....</b></p> <p><b>2).....</b></p> <p><b>3).....</b></p> <p><b>et al.</b></p>
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<sup>63</sup> Delete whichever does not apply

<sup>64</sup> Here it remains to be seen whether and how national legislation provides rules for the settlement of disputes; it also remains to be seen whether definitive national law will be that applicable at company headquarters.

<sup>65</sup> The agreement can also be made for a duration of several years. Whether that makes any sense has to be carefully considered. In any case, a termination clause is essential.