



**Country report: (3) Transposition of the
EU Directive on worker involvement in the European Company (SE)**

France

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SE directive transposed in France

The French Parliament transposed the European company (SE) statute into French law shortly before the summer vacations, on 13 July 2005. This is probably why this law was hardly noticed by the press or the public.¹ The transposition is part of a “law for confidence in and modernisation of the economy” which has been enacted as Law No. 2005-842 of 26 July 2005 and published in the *Journal Officiel* No. 173 (27 July 2005), p. 12160. Articles 11 to 15 transpose the SE statute. Articles 11 and 13–15 adapt the French legislation to the SE regulation: art. 11 modifies the French Commercial Code, art. 13 the Monetary and Fiscal Code, art. 14 the Insurance Code and art. 15 the Book of Fiscal Procedures. Art. 12 transposes the European directive on employee involvement by introducing a chapter XI into part III of the Fourth Book of the French Labour Code. We will here outline the most important features of the directive’s transposition.

Art. 12 of the French transposition law is structured in five sections that roughly follow the SE directive. Section 1 (art. L. 439-25) defines employee involvement (information, consultation and participation). Section 2 (art. L. 439-26 to L. 439-33) deals with the Special Negotiating Body and negotiating procedures. Section 3 (art. L. 439-34 to L. 434-42) transposes the standard rules of employee involvement in case no agreement is reached. Section 4 (art. L. 439-43 to L. 439-47) makes some common provisions and section 5 (art. L. 439-48 to L. 439-50) makes some provisions for renegotiations after the registration of an SE. We have marked in *italics* the provisions in the transposition law that are distinct from those in the SE directive or which have made use of the directive’s invitation to exercise an option.

1. The Transposition Law

- **Section 1: The definition of employee involvement: information, consultation, participation**

This part of the transposition law repeats the definitions of the SE directive.

- **Section 2: The Special Negotiating Body (SNB) and the negotiating procedure**

This section defines the composition and functioning of the SNB in the process of reaching an agreement on employee involvement with the management of the participating companies of the future SE.

As laid down in the directive, the SNB members are elected or appointed in proportion to the number of employees in each Member State, with one seat for every 10% (or a fraction thereof) of the number of employees employed in the participating companies of the SE. In the case of merger, there may be additional members (up to 20%). *The procedure for designating these additional members will be laid down in a forthcoming application decree for the French transposition law.*

¹ Only two articles in highly specialized social affairs publications have given an analytical account of the transposition law: *Liaisons sociales* N° 11429, 25–26.7.2005 and *Liaisons sociales Europe* N° 135, 1–14.9.2005.

French members of the SNB are designated by the trade union organisations from amongst their elected works council members (comités d'entreprise or comités d'établissement) or from amongst their union representatives² on these councils, on the basis of the results of the last elections. The seats are distributed in proportion to the number of employees in each electoral body,³ and within each body in proportion to the votes obtained by each union. If there is no union in the company or the establishment, the SNB representatives are elected directly by the workforce.

The SNB may call on experts of its choice who may be present at the meetings in an advisory capacity, but *the funding, borne by the participating companies, is limited to only one expert.*

The transposition law repeats the mode of decision making of the SNB in order to reach an agreement as laid down in the directive. Decisions are taken by absolute majority of its members, who also have to represent the absolute majority of the employees.

However, for a decision not to open negotiations or to terminate them without calling for application of the standard rules, a qualitative majority is required (two thirds of its members representing at least two countries and two thirds of the employees of the SE and its subsidiaries). This majority is also required for decisions that lead to a reduction of existing participation rights, if these participation rights apply to more than 25% (in case of merger) or more than 50% (in other cases) of the total number of SE employees. Decisions not to negotiate or not to apply the standard rules are not permitted in the case of the constitution of a SE by transformation of a company with existing participation rights.

- **Section 3: The standard rules**

In conformity with the directive, the standard rules for employee involvement shall apply if no agreement has been reached within six months or if the SNB has agreed so with the management. The standard rules do not apply if the SNB has decided to terminate (or not to open) negotiations by a qualified majority (two thirds of its members representing at least two countries and two thirds of the employees of the SE and its subsidiaries). Such a decision cannot be taken if the SE is set up by transformation of an existing company in which there are participation rights for employees.

The standard rules demand that a *representative body be set up which the French transposition law calls the **SE committee** (comité de la SE), apparently on analogy with the French term for European works council (EWC) “comité d'entreprise européen”. On analogy with the standard rules of the French transposition of the EWC directive and with the French works council legislation, this committee is*

² According to the French Labour Code, each union that has designated a union delegate in an establishment (or company) also designates a representative to the works council, who can be the same as the union delegate but who (like the elected members) must be an employee of the establishment (or the company).

³ Generally, there are two electoral bodies for each works council: one for blue- and white-collar workers and one for engineers, technicians, supervisors, professional and managerial staff, and so on. If the second group exceeds 25% of the workforce, a separate third electoral body is set up for engineers, professional and managerial staff (in French “*cadres*”), the second then being reserved only for technicians and supervisors.

*composed of the executive manager (or his/her representative), assisted by two collaborators (with a consultative voice) and the employee representatives elected or designated by the same rules as the national procedures for the election or designation of the SNB. The SE committee is chaired by the executive manager (or his/her representative) and takes its decisions by a vote of the majority of its members. It designates a **secretary** from amongst its members. If it is composed of more than 10 employee representatives, it also elects a **select committee** – the “bureau” – comprising three of its members. The secretary and other SE committee members, as well as the members of the select committee, shall be given the time off they need to fulfil their duties, which shall not exceed 120 hours per year, including participation in committee meetings. They also have the right to take time off for training.*

The rules governing composition of the SE committee are the same as for the SNB. The committee adopts rules of procedure, which may fix rules of adaptation to structural changes within the SE. The committee may decide to modify its composition by means of an internal agreement.

The information and consultation rights of the SE committee follow the prescriptions of the standard rules annexed to the directive. The SE committee receives the agenda for meetings of the administrative or supervisory boards and copies of all documents submitted to the general meeting of shareholders. It also receives regular information reports *from its president who convenes it* at least once a year for a meeting. *The agenda is established jointly by the president and the secretary of the SE committee.*

In case of “exceptional circumstances affecting the employees’ interests to a considerable extent”, the SE committee – or, where it so decides, the select committee – has the right to request a special information and consultation meeting. If the management does not act in accordance with the opinion expressed by the SE committee, the committee has the right to request a further meeting with a view to reaching an agreement. In case of a meeting with the select committee, those SE committee members who represent directly affected employees have the right to participate.

As in the case of the SNB, the French transposition law *limits the funding of external experts borne by the participating companies to only one expert.*

All the documents communicated to the employee representatives must be translated into French.

If the executive manager of the SE decides to launch a takeover or exchange bid, he/she may inform the SE committee only once this offer has been published. In this case, he/she must convene a meeting of the SE committee within 8 days of the bid’s publication, giving them detailed written information on the contents of the bid and on the foreseeable consequences for employment.

Existing participation rights are maintained in the case of transformation. In all other cases, they must be equal to the highest proportion applied in the participating companies before registration of the SE, if participation rules applied to more than 25% (in case of merger) or more than 50% (in other cases) of the total number of employees before registration of the SE and if the SNB has not decided otherwise.

The SE committee decides on the allocation of seats on the administrative/supervisory board according to the proportion of SE employees in

each Member State. *The committee “as far as possible” secures a seat for every Member State that applied a participation rule before registration.*

- **Section 4: Common provisions**

Registered SEs and their subsidiaries are not required to comply with the directive.⁴

Once the SE is registered, the agreement negotiated by the SNB or a “collective agreement negotiated at the appropriate level” may decide on the removal or modification of the functioning of the representative institutions that are bound to disappear because of the loss of legal autonomy of one or several companies situated in France, in the wake of SE registration.

- **Section 5: Renegotiation procedures after SE registration**

Four years after establishment of the SE committee it shall examine whether to open negotiations for the conclusion of an agreement under the conditions of section 2. If so, the SE committee will operate in place of the SNB.

If the SNB decides to terminate or not to open negotiations, it can request that they be reopened later. If 10% of the workforce or SE representatives demand a reopening of negotiations after two years, the management must reconvene the SNB.

If these negotiations fail, however, the standard rules do not apply.

If after registration of the SE, changes occur in its structure, in the location of its head office or in the number of its employees which would “substantially” modify the composition of the SE committee or the mode of employee involvement that has been established by agreement or by application of the standard rules, a renegotiation must take place. If this should fail, the standard rules apply.

2. Main differences between the directive and the French transposition law

As one can easily see from the italicised text, the French transposition law has often opted for more restrictive rights for employee representatives wherever the directive has left room. In particular, it has limited funding to only one expert and has excluded external trade union officials from SNB or SE committee membership (in the standard rules).

The transposition law does not explicitly mention that representatives from European union organisations might act as experts of the SNB, as the directive does (art. 3.5). Neither does it mention the possibility of the SNB informing external union representatives of the beginning of negotiations (art. 3.5). These are differences more in style than in contents, because such possibilities are not explicitly excluded.

⁴ After a close reading, however, we found that the transposition law has omitted to mention that, as laid down in art. 13.1 of the SE directive, SEs that do not apply the standard rules, because the SNB has decided otherwise with a qualified majority, do fall under the EWC directive.

In the standard rules of the French transposition law, the executive manager is considered a member of the SE committee. In the directive, only the employee representatives are considered as members (Annex 1a). The directive allows the Member States to lay down rules on the “chairing of information and consultation meetings” (Annex 2d), which is not exactly the same as the chairing of the committee itself. This might cause problems for voting procedures. According to the transposition law, the SE committee “takes its decisions by a vote of the majority of its members”. According to the French legislation on works councils and derived committees, the executive manager chairs the committee, but does not take part in the vote in case of consultation. Whether he/she is allowed to participate in other votes is still controversial after a number of different court rulings.

3. The positions of the social partners

The social partners were consulted by the French Ministry of Labour during the preparation of the transposition law. The first phase of consultation began in late 2003, after the intergovernmental experts had finished their work. In March 2003, a first draft of the transposition law was sent to the social partners so that they could make their comments and proposals for changes. A modified draft was sent to them in June 2004. This was discussed on 25 June 2004 at a plenary meeting of the Social Dialogue Committee for European and International Questions.⁵ The main union organisations CGT, CFDT and CGT-FO were present during this meeting, but not the CFTC, nor the employers’ organisations MEDEF and CGPME. The meeting was chaired by the director of labour relations, a high ranking officer of the Labour ministry.

During this meeting, the unions expressed their satisfaction that some of their critical remarks on the first draft had been taken into account in the editing of the second draft. Improvements were noted on the following points:

- the possibility for the SNB and the SE committee calling on several experts (although still with only one paid);
- the obligation of regular submission of information to the SE committee (but only in the standard rules);
- the obligation to translate all submitted documents;
- the possibility of designating a union representative (although not an external one) as French member of the SNB).

However, all the union representatives regretted that several of their demands had not been taken into account. For instance, the option offered by the directive to give unions the possibility of nominating external union officials as SNB members was not included in the government draft. The unions also regretted that the draft, unlike the directive, did not mention the representatives of European union organisations, not even their possible intervention as SNB experts.

Furthermore, the CGT regretted the possibility of removing existing French employee representations, such as the central works council (*comité central d’entreprise*) or the group committee (*comité de groupe*), if a French company loses its legal autonomy

⁵ This Committee, also called the “Comité Blanchard” was set up by the French Labour Ministry in 1991 as a systematic consultation forum for the French social partners for all European (later also international) social matters.

within the new SE. The CGT also regretted the failure to clarify the weight of individual votes in the case of different votes by representatives from the same country within the SNB. The union would favour a weighting in proportion to the electoral results of the represented union. The draft did not make any provisions on that point.

The CFDT regretted that the draft does not use the expression “spirit of cooperation” used in the directive in relation to negotiations with the SNB, which would have reinforced the management’s obligation to negotiate “in good faith”. The CFDT also criticized the designation of the executive manager as a full member of the SE committee in contradiction of the prescriptions of the directive.

So far, there has been no official statement from the social partners on the final version of the transposition law. The union representatives involved in the consultation process we have interviewed regret that the government did not take into account all their criticisms on the draft law. The CGT continues to be suspicious of the possibility introduced into the transposition law of removing existing employee representation structures in the French parts of an SE by means of the SE agreement or any other collective agreement. This part of the transposition law seems to contradict the provision of the SE directive that this directive “shall not prejudice the existing rights to involvement provided for by national legislation and/or practices in the Member States” (art. 13.3). Obviously, the French legislation has not made use of the opportunity given by art 13.4 of the directive, which stipulates: “In order to preserve the rights referred to [in art 13.3], Member States may take the necessary measures to guarantee that the structures of employee representation in participating companies which will cease to exist as separate legal entities are maintained after the registration of the SE”. On the contrary, the French transposition has facilitated the abolition of existing representation structures. This will certainly be a crucial point for a future evaluation by union organisations.

For the moment, very few French companies have officially declared themselves as candidates for SE establishment. The first to do so is the multi-branch conglomerate Suez-Lyonnaise des Eaux whose president Gérard Mestrallet made such a declaration on 9 August 2005. However, before making this step official, he is waiting for the publication of the decrees of application of the transposition law by the Ministry of Labour.

Other potential users of the SE directive include the unions themselves. In March 2005, the French employees of Alstom Power Boilers mandated their union organisations CGT, CFDT and CFE-CGC to evaluate the possibility of establishing an SE by means of a leveraged management buyout. Alstom Power Boilers, a subsidiary of the French Alstom Group, is faced by Alstom’s plan to transfer the research and production capacity of Alstom Power Boilers to the USA and to close down the two European sites, in Vélizy (France) and Stuttgart (Germany).⁶

⁶ Francine Blanche, the CGT union representative, has received the support of Philippe Herzog, member of the European Parliament, for this project, which she presents in *La Lettre de Confrontations Europe*, April–June 2005 (see also the websites of Herzog’s association www.confrontations.org).