

**European Trade Union Institute for Research,
Education and Health and Safety (ETUI-REHS)**



Country report: Transposition

Luxembourg

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Transposition of the SE legislation in Luxembourg

On 21 January 2005, the Luxembourg Government tabled a bill in the Chamber of Deputies to supplement the Statute on European companies with regard to the involvement of employees (parliamentary document No 5435), henceforth referred to as the "bill".

This **bill** is intended to transpose Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute on European companies with regard to the involvement of employees (the "Directive").

As indicated by its name, the Directive supplements the Statute on European companies ("SE") established in Council Regulation (EC) 2157/2001 of the same date (the "Regulation") which entered into force on 8 October 2004.

As the Directive and the Regulation are two separate but related texts under Community law, Luxembourg decided to take the same approach at national level, and to transpose the Directive and the Regulation in separate legislative acts.

Three different factors come into play in the new bill:

- a) Obviously the bill is intended to transpose the Directive.
- b) It is one of a current series of bills and new legislation modernising labour law, particularly in respect of social dialogue.

Examples of new social dialogue legislation include the law of 30 June 2004 on industrial relations and the draft bill on social dialogue within companies, which has just been completed and sent to the social partners for comment. (The draft bill seeks to revise existing legislation on workforce delegations, joint committees, and worker representation on the management boards of public limited companies).

- c) Thirdly, and lastly, the bill follows on from the law of 28 July 2000 on the creation of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Council Directive 94/45/EC of 22 September 1994).

The two directives (and in turn the texts intended to transpose the directives into Luxembourg law) are closely related, both in terms of content (involvement of workers in Community-scale undertakings) and the procedures they seek to establish (a two-part procedure, initially creating a special negotiating body, and then a permanent representative body for employees).

It therefore seemed logical to include in the **bill** solutions that were deemed appropriate and useful during the vote on the above-mentioned law of 28 July 2000.

(See on this point the annex entitled "European Works Councils Directive finally implemented" in English and French).

The Directive does not impose any one model for worker involvement, but rather aims to ensure compliance with the "before and after" principle (as described in recital 18 of the Directive), which is designed to maintain the employees' acquired rights as regards involvement in company decisions and means that "employee rights in force before the establishment of SEs should provide the basis for employee rights of involvement in the SE". Consequently, an SE will not be required to establish a structure for involvement or representation if there was no such system in place in the company in question.

The structure of the bill, which is divided into four chapters, reflects the overall approach of the Directive.

Chapter I contains the general provisions and Chapter IV contains various additional provisions, whilst Chapter II covers the negotiation of an agreement between the social partners and Chapter III establishes the standard rules, which will only apply if the partners have not reached an agreement (or agree to a standard application of the rules).

The different parties are therefore responsible for reaching an agreement on the ways in which workers are involved within the SE: the worker representatives meeting in a special negotiating body, on the one hand, and representatives of the companies concerned on the other. (This is the purpose of Chapter II of the bill).

The provisions contained in Chapter III, both those on informing and consulting workers, and those on worker participation in the SE management or supervisory board, constitute a set of subsidiary rules which will apply only if the parties are unable to reach an agreement (or if they agree to a standard application of the rules).

Thus the bill does not introduce any fundamentally new concepts into Luxembourg's labour law, either in terms of the general approach or in terms of the methods used:

- On the negotiation of an agreement (Chapter II), Luxembourg's labour law traditionally favours social dialogue and independent negotiation between the social partners, rather than imposing rigid mechanisms by means of legislation. The main aim of labour law is therefore to create a framework for the negotiating process. Although the special negotiating body was introduced fairly recently, it is not a completely new concept, as the same mechanism was foreseen in the aforementioned law of 28 July 2000 on the creation of a European Works Council.

- The standard rules (Chapter III) relate to the creation of a representative body designed to inform and consult employees, and to permit worker participation in the company's management or supervisory board where relevant.

In such cases, some SEs may need to set up a co-determination mechanism. The various worker representation bodies are well-known and well-established in Luxembourg's law, from workforce delegations (law of 18 May 1979) to joint committees (law of 6 May 1974) to European Works Councils (law of 28 July 2000). Co-determination in certain companies has also been part of the law in Luxembourg for over 30 years: the concept was introduced in the law of 6 May 1974.

So, to reiterate, the bill is consistent with those provisions of the Directive that build on the Directive on European Works Councils, which was implemented by the law of 28 July 2000 on European Works Councils. It did not seem reasonable to call into question the solutions that were accepted by the legislator and the social partners in 2000 when drafting that legislation, given that there is little fundamental difference in the context and objectives of the two acts.

The Government stated that the bill was clearly urgent and advantageous as "European companies could be a useful tool for attracting companies to the Luxembourg economy".

In view of the urgency, the Council of Government agreed on a draft document dated 11 June 2004, and called on the Minister for Labour and Employment to submit it to the social partners for comments. These comments would then be incorporated into the document, which would then be formally submitted for approval.

In a letter dated 17 June 2004, the Minister for Labour and Employment consulted the Union of Luxembourg Companies and the Joint European Secretariat of the OGB-L and LCGB trade unions. The views of these organisations were submitted to the Minister for Labour and Employment in letters dated 16 July (trade unions) and 23 July 2004 (employers).

The bill was revised in accordance with the mandate from the Council of Government, incorporating all the comments made by the social partners, who did not in fact express any fundamental opposition or differences of opinion.

The legislative procedure in Luxembourg requires that all chambers of trade likely to be affected by draft legislation be consulted about it. (In the case of employees, this means the Chamber of Labour, the Chamber of Private Sector Employees, and the Chamber of Civil Servants; on the employer side, the Chamber of Agriculture, the Chamber of Commerce and the Chamber of Crafts.)

Once these views have been submitted, the Council of Ministers gives its own opinion, taking into account the comments made by the chambers of trade, and the bill is then submitted to a Chamber of Deputies working committee before being put to the vote.

The 2005 report states that on 18 March 2005, the Chamber of Labour issued its opinion which contained various comments and criticisms but basically indicated agreement with the principles of the bill.

On 25 March 2005, the Chamber of Private Sector Employees issued a fairly critical opinion on the government's proposal.

In particular, the Chamber of Private Sector Employees felt that whilst the European company structure could prove economically beneficial for Luxembourg, it must not do so by disadvantaging workers.

The Chamber called for amendments to the bill, in particular to the rules on the composition of the special negotiating body and on worker involvement in SE management.

A 33-page opinion on the bill was issued by the Council of State (No 46,883, Doc. Parl. 5435) on 17 January 2006. As this report also contains a coordinated text it may well be examined by the Commission of the Chamber of Deputies. Furthermore, a joint opinion by the Chamber of Commerce and Chamber of Trades was published on 16 February 2006 in the parliamentary papers.