

The status of transposition of SE-Directive in Luxembourg



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On 21 January 2005 the Luxembourg Government submitted to the Parliament ("Chamber of Deputies") a draft law supplementing the European Company Statute in relation to the question of worker involvement (parliamentary document n°5435 – hereafter referred to as "the draft").

The purpose of the draft is to transpose into Luxembourg's national legislation the Council directive 2001/86/EC of 8 October 2001 which supplements the European Company Statute with regard to the involvement of workers (the "Directive").

As indicated by its title, the Directive is an accompaniment to the European Company Statute (the "SE") which is the subject of regulation (EC) n°2157/2001 adopted by the Council on the same date (the "Regulation") and which came into force on 8 October 2004.

Just as the Directive and the Regulation form, in Community law, two separate, albeit interconnected, texts, Luxembourg has embarked, at national level, on the same path of transposing the Directive by means of a law separate from that which implements the Regulation.

The new draft law is to be viewed in a threefold context:

- a) Its purpose, quite obviously, is to transpose the Directive.
- b) It is one of a series of recent draft laws and new legislation designed to modernise labour law, particularly in relation to the social dialogue. By way of example, it is appropriate to mention here, in the area of social dialogue, the law of 30 June 2004 on collective labour relations or the preliminary draft law on social dialogue within firms which has recently been finalised and forwarded for the opinion of the social partners. (This text is intended to revise the legislation on staff delegations, joint committees and board-level employee representation in public limited companies).
- c) The draft constitutes a follow-up to the law of 28 July 2000 on setting up a European works council or a procedure for the information and consultation of workers in undertakings and groups of undertakings operating on a Community scale (Council Directive 94/45/EC of 22 September 1994).

The two directives (and in parallel the texts to transpose them into the national legislation of Luxembourg) are linked, both in terms of content (involvement of workers in Community-scale undertakings) and in terms of the procedure they are designed to set up (which is a procedure in two stages, with the setting up, in the first instance, of a special negotiating group and, subsequently, of a permanent worker representation body).

It thus seemed self-evident that the **draft law** would employ solutions that had been accepted as appropriate and useful in the context of adopting the abovementioned law of 28 July 2000 (cf. annex “European Works Council Directive finally implemented” in English and French).

Insofar as the Directive does not impose a single model for involvement but sets out to respect the so-called “before-after” principle (as stated in the 18th recital of the Directive) that is intended to guarantee workers’ acquired rights in terms of involvement in company decision-making and which means that workers’ rights existing before the SE was set up should form the basis for their participation rights within the SE, an SE will not be required to introduce a system for involvement or representation if such an arrangement did not previously exist in the companies concerned.

The structure of the draft law is divided into four titles reflecting the general approach of the text.

Apart from Title I, which contains general provisions, and Title IV, containing miscellaneous provisions, the draft law contains a Title II on negotiating an agreement among the social partners and a Title III stating reference provisions that are to apply only insofar as the partners fail to reach agreement (or actually agree on the collective implementation of these reference provisions).

It is therefore up to the different parties – workers’ representatives meeting in the special negotiating body, on the one hand, and representatives of the companies concerned on the other – to reach an agreement on the details of worker involvement in the SE. (This is the subject of Title II of the law).

The provisions contained in Title III – whether concerning information and consultation of workers or participation of the latter on the SE board or supervisory body – constitute a corpus of subsidiary rules that apply only if the parties fail to reach an agreement (or if they collectively agree to implement these provisions).

As such, the draft law introduces no fundamentally new concept into national labour law in Luxembourg, either as regards the general approach or the techniques used:

- Concerning the negotiation of an agreement (Title II): the national labour law in Luxembourg traditionally inclines towards social dialogue and free

- collective bargaining in preference to the imposition of rigid mechanisms by way of legislation; the main task of the law is therefore to provide a certain framework in which the negotiation can take place. Though the creation of a special negotiating group is indeed a relatively recent mechanism, it is not actually unprecedented since the same mechanism is provided for in the aforementioned law of 28 July 2000 on the creation of a European works council.
- As for the reference provisions (Title III), these deal with setting up a worker representation body, with tasks of information and consultation, and, where appropriate, with the participation of workers on the company board or supervisory body.
This latter provision may, in the case of certain SEs, give rise to the need to set up a co-determination mechanism. Worker representation bodies are familiar and well established in Luxembourg law, whether in the form of staff delegations (law of 18 May 1979), of joint committees (law of 6 May 1974) or of the European works councils (law of 28 July 2000). Similarly, co-determination in certain firms has been a feature of legislation in Luxembourg for more than 30 years, having been introduced by the law of 6 May 1974.

It is recalled yet again, in relation to those provisions of the Directive that are based on the Directive on European works councils, that the draft law is aligned on these provisions in the manner in which they have been implemented in the law of 28 July 2000 on the European works council. Indeed, it appeared hardly plausible to call into question the solutions that had been accepted both by the legislator in 2000 and by the social partners in drawing up this law, given that the context and purpose of the two laws are virtually very similar.

The Government stated the draft law as being of evident interest and urgency given that “the European Company represents an instrument that may well be of interest for attracting companies into the Luxembourg economy”.

The Government Council, aware of the urgency, agreed on a draft law dated 11 June 2004 which it asked the Labour and Employment Ministry to submit to the social partners for their remarks and to incorporate any remarks into the text to be subsequently submitted for adoption.

In a letter of 17 June 2004, the Minister of Labour and Employment requested the opinion of the Union of Luxembourg Businesses and of the European Joint Secretariat of the trade unions OGB-L and LCGB. These organisations’ opinions were forwarded to the Minister of Labour and Employment in letters dated 16 July (trade unions) and 23 July 2004 (employers).

The draft law was revised, in accordance with the Government Council’s instructions, so as to incorporate all the social partners’ remarks which, in fact, contained no radical objections or disagreements.

First report (September 2004)

In Luxembourg, at the end of 2003, the Ministry of Labour and Employment drafted a bill on transposition of Directive 2001/86/EC of the EU Council of 8 October 2001, complementing the European Company statute with regard to employee involvement.

Following the elections in June 2004, a new government coalition (Christian Democratic Party/Socialist Party) signed a new governmental agreement on 4 August 2004, which also mentions “employee involvement in the European Company”.

The government intends to deal as soon as possible with the SE statute. One important element will be the part on employee involvement. After consulting the social partners, work will be accelerated so as to be able to transpose the law as rapidly as possible, whereas the company law part will come into force soon.