

SEEurope country report: (3) Transposition

Transposition into Luxembourg law of Directive 2001/86/EC

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Two laws dated 25 August 2006 transposed the European Company into the law of Luxembourg while at the same time supplementing the European Company Statute (SE) in relation to worker involvement.

It should be noted that, as well as transposing Directive 2001/86/EC of 8 October 2001, these laws also constitute a follow-up to the law of 28 July 2000 **on the establishment 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.**

The new laws also reflect the legislator's wish to modernise labour law and, in particular, its "social dialogue" aspect, one of the best illustrations of which is the law of 30 June 2004 on collective labour relations.

The first of the new laws mentioned introduces the management system known as "two-tier management" composed of a praesidium and a supervisory board, an arrangement hitherto unknown in Luxembourg law.

Public limited companies, including the European Company, will therefore in future be able to choose either to have a management board or a praesidium and a supervisory board.

The Chamber of Deputies was nonetheless careful to ensure that a firm that adopts the two-tier system under the national Luxembourg law before turning into an SE cannot avoid complying with the rules on employee representation: in this event, employee representatives are to be allowed on the supervisory board according to the same arrangements as those applicable to the management board.

The Chamber of Deputies also completed the initial government plan by settling the question of the representation of public officials and employees in an SE whose capital is owned by public law bodies.

As the Directive does not impose a single model of involvement but is intended to respect the "before-after" principle (found in the 18th recital of the Directive), designed to guarantee workers' acquired rights in relation to involvement in the decisions taken by companies, such that "the rights of workers pre-existing the constitution of the SE should form the basis of the

provisions governing their rights in relation to involvement in the SE”, an SE will not be obliged to set up an involvement or representation arrangement if no such arrangement previously existed in the companies involved.

The second law is divided into four titles, reflecting the general approach of the text of the Directive

Apart from the First Title, which contains the general provisions, and Title IV, containing miscellaneous provisions, the law contains Title II on negotiating an agreement between the social partners and Title III setting out reference provisions which are applicable only if the partners are not required to conclude an agreement (or if they agree to implement these provisions for the purposes of an agreement).

It is therefore up to the different parties – workers’ representatives meeting in the special negotiating group on the one hand, representatives of the participating companies on the other – to reach an agreement on the details of worker involvement in the SE (such being the purpose of Title II of the law).

The provisions contained in Title III – whether relative to information and consultation of workers or to their participation in the SE’s management or supervisory bodies – constitute a corpus of subsidiary rules that are applicable only if the parties fail to reach an agreement (or should they specifically agree to adopt them as they stand as the content of an agreement).