



**Country report: (3) Transposition process**

**SPAIN**

**The SE Regulation and Directive -  
Discussion and status of the transposition process**

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## 1. Workshop on SE Directive

A training workshop on the SE Directive for UGT trade unionists was organised in May 2004 by the consulting firm Labour Asociados in Madrid. The new government's General Director of Labour (Esteban Rodríguez Vera), Norbert Kluge, Armando Fernández Steinko, Antonio Ferrer (UGT responsible for participation) and a representative of the employers' organisation were invited to the closing session. Norbert Kluge presented a general overview of the different traditions of corporate governance within the European Union and reported on the transposition process in Germany.

The main topics of Mr Rodríguez's speech were as follows:

the Directive will contribute to the regulation of European industrial relations. The "involvement" concept in the Directive expresses a new concept of participation based on an invitation to the employees to take more responsibility in the management of the firm with the aim of increasing competitiveness.

Unlike its predecessor, the new Spanish government is not opposed to the Directive; indeed, the promotion of civil society participation was part of its electoral programme. It will grant autonomy to the negotiating social partners within the framework of transposition.

The SE law has a number of technical problems as it is a mixture of national and European law. Nevertheless, by May 2004 there was already a draft as the previous government had already done a lot of the technical work.

Antonio Ferrer (UGT) focused on the following:

There are some significant pre-democratic elements in Spanish management culture. However, during the 1980s there were interesting experiences of enterprise democracy within public companies and savings banks.

The pressure exerted by the ETUC opens up the prospect of going beyond mere transposition of the Directive: it could reduce the democratic deficit in Spanish firms and strike a new balance between labour and capital.

We need a new enterprise model and a new culture based on greater cooperation. However, that does not mean that conflict between different interests will come to an end. In Spain information rights are treated as passive rights: workers cannot alter a management decision. This must change as workers are under increasing pressure to be more flexible and efficient. In this sense, transposition should lead to a change in the understanding of passive information rights in the Workers'

Statute (§64).

The Spanish employers' representative made the following comments:

The SE Regulation is important as it can help to reduce costs. However, it also introduces additional complexity to enterprise regulations.

The Directive does not include the full range of possible forms of participation. Employee involvement in increasing company competitiveness does not necessarily have to include board participation. The EWC regulations are already sufficient.

The Directive could conflict with the Spanish Constitution as it limits rights of free enterprise.

The ensuing discussion reflected the different views of those present. On the one hand it reflected hopes of increasing worker participation in enterprise management, especially in a country like Spain with its deeply autocratic enterprise culture. On the other hand, there was also a fear of being responsible for introducing unpopular measures and of “democratic dumping” within the EU.

## 2. Transposition process (September 2004)

### a. The government<sup>1</sup>

The new Spanish government has a different attitude to European issues compared with its predecessor. Transposition of the Regulation and the Directive was part of the Social Democratic Party's (PSOE) electoral programme. The transposition process was included in the first meeting with the social partners on 8 July 2004 to define the list of subjects for social dialogue. The new government also seems interested in cultivating a different, more interactive style of governing based on consensus and transparency.

Although the change in government delayed the technical work involved in transposition, by July 2004 the work had been done. A first confidential draft of the transposition project was therefore on the table. The main technical constraint is the involvement of two ministries in transposition: the Ministry of Justice (and partly the Ministry of the Economy) is working on the Regulation,

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<sup>1</sup> Interview held in June 2004 with a high official of the Ministry of Labour. He has the technical responsibility for labour regulations and also for the transposition process.

and the Ministry of Labour on the Directive. In September 2004 the transposition draft was submitted to the social partners for consultation and in October 2004 it was submitted to the High Council of Justice, the Council of State and the Social and Economic Council. If everything runs smoothly, at the end of October the transposition will be approved by the Cabinet and submitted to Parliament. The whole process will take place by emergency procedure. The delay is not too serious: only one country (Iceland) had managed to produce a completed transposition project by July 2004. Problems would emerge if there were firms which wanted to adopt SE status between the official deadline (8 October 2004) and the effective approval of the Spanish transposition. This would mean that workers could not participate in the negotiation process, as foreseen by the Directive (§3.1). However, this is not expected.

The transposition draft on which the government was working in July 2004 did not mention any possible adaptation of the Spanish Workers' Statute (see my report on Spanish industrial relations and workers' participation),<sup>2</sup> apparently because it will not create any substantially new rights in terms of workers' participation. Nevertheless, the Directive could lead to a broader discussion on participation in Spanish firms as it makes little sense to treat workers' participation as merely an "internal" issue in some EU countries, while firms in other countries are merging continuously. Transposition will not be done by collective agreement (in fact, no transposition has taken place in this way) but the government will try to intensify consultation with the social partners.

The Ministry of Labour representative commented on the problematic issues related to the SE Regulation and Directive, in broadly the same terms as other experts (see our March 2004 report): the SE discussion had a deeper, partly political meaning in the 1970s, a meaning which it does not have today. As large companies were mainly national in scope, international mergers were not a significant issue; there was no common currency; and the commercial law systems of EU members varied strongly from one another. Overall, the general economic and political framework was strikingly different. Today the situation has changed: European companies are merging continuously and finding appropriate legal mechanisms on a bilateral basis – there have been no real political or legal obstacles. Other problems include the fact that the Regulation and the Directive are too general; it will be complicated to implement them; and it is not easy to explain why employee involvement should not be regulated by the EWC statute.

The SE could have been a real step forward if it had included fiscal issues

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<sup>2</sup> <http://www.seeurope-network.org/homepages/seeurope/countries/spain.html>

(harmonization of company taxation). However, agreement was not possible as only countries with higher rates wanted to start a harmonization process. Spanish employers and also the previous government do not like the idea of workers' participation at board level at all and some Spanish trade unions are not enthusiastic either, arguing that there are "other forms of work participation". The outcome might be that companies take their time and wait even longer than two years to make use of Directive and Regulation. They will probably try to find ways around workers' participation at board level. Nevertheless, the Spanish government will do its best to avoid any form of "democratic dumping" within the EU.

## **b. Social partners**

The government has not invited the social partners to a new meeting since July 2004. The draft of the transposition arrived on 28 September and at the beginning of October they were still discussing and formulating their position.

The two representative **trade unions** (Comisiones Obreras and Unión General de Trabajadores) have created internal discussion and information groups to study the Directive and Regulation and they have started several training projects for union members. Both have yet to sit down to define a common position. The feeling that the Law will not be utilised by many firms seems to be gaining ground also among the unions (the Acelor case does not seem to be representative and some banks who are planning European mergers are using the EWC legal framework). On the positive side, the Directive may start a more general public discussion on participation and enterprise democratisation; however, that would be less an economic than a social and political matter. This could be the main reason for the reluctance of Spanish employers to accept the spirit of the Directive, which is regarded as illogical (see the concept of "involvement" and the comments of Mr Rodríguez above). As this is a sensitive issue in Spain, the outcome is uncertain: it might be that calls emerge for greater social control of enterprise activities. The concrete effect of the Directive on management practices will probably be less significant.

The main criticisms of the **employers' association** seem to confirm this interpretation. The enterprises calling for consultation with the employers' association are worried: the press seems to be presenting the Directive as opening the door to worker "self-management and participation". The position of the Spanish employers' association is that "employee

involvement” can cover far more than the definition of participation included in the Directive: for example, co-responsibility for enterprise performance, workers’ share ownership, profit sharing, and so on, are also forms of participation which are not included, although they are well known. The employers are particularly opposed to the unilateral introduction of a “particular understanding of employee involvement” (the presence of workers’ representatives on boards). It is regarded as not part of the Spanish tradition of industrial relations and therefore rather “artificial” within the Spanish context.

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