

## **Why it is important for employees that the SE Directive is transposed into national law by 8 October 2004**

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A first overview of the ETUI project SEEUROPE<sup>1</sup> on the state of the transposition of the SE Directive into national law (March 2004) shows that large EU states in particular, such as France and Germany, but also Italy and Spain, do not appear to be very well prepared: drafts of a corresponding law or of a collective agreement do not yet exist.

In contrast, countries such as Sweden, Denmark, the Netherlands, and also Austria have made progress; in the UK, consultations with the trade unions and employers' organisations are in full swing; and in the new EU countries of Central and Eastern Europe advanced preparations have also been reported.

From 8 October 2004 onwards, enterprises will be able to take advantage of the SE Statute in order to set-up a European Company (SE, *Societas Europaea*). However, that will be possible only if they are able to reach agreement concerning employee involvement, as regulated in the SE Directive. Only on this condition can the SE be registered.

If the SE Directive is not transposed on time there will be the following consequences:

- no European Companies may be founded and registered in countries which delay transposition;
- European Companies which include firms or employees from countries in which the SE Directive has not been transposed cannot be established in any country whatsoever, unless business premises or employees from these countries are excluded.

It is likely that foreign investors in particular, but also outsourced, legally separate branches of European and multinational companies, will very quickly seek to make use of the SE Statute after the passing of the time limit for transposition. They will then reap the benefits, perhaps particularly in the new member states where they will be welcomed and the formal legal requirements will in all probability have been put in place on time.

If for no other reason interested companies will from the outset have to exclude, for example, Germany or France as a home country on formal grounds. Countries such as Germany or France have indicated by their foot-dragging legal transposition that they do not regard the SE as a particularly attractive form of association for enterprises on their territory. This may cause investors particularly from outside the EU/Europe to bypass Germany when founding an SE.

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<sup>1</sup> From the beginning of April the project website ([www.seeurope-network.org](http://www.seeurope-network.org)) will go online, which will contain a multiplicity of information on the situation in the various EU member states.

From the employees' standpoint failure to transpose the SE Directive on time means that precisely those employees with experience of strong workers' participation will be formally denied the opportunity to provide for strong and meaningful workers' participation in the SE because they will be excluded for the time being from any kind of SE foundation process by the absence of legal authority. They will not be able to participate in negotiations on employee involvement in the SE.

Agreements with weak provisions for employee involvement could then determine the first phase of the introduction of the SE. Since in European legislation on the SE only (precautionary) measures for existing participation models have been regulated in relation to SE foundation, this lead-in is likely to have negative consequences for the level of future participation. It can hardly be expected that the later integration of, for example, German subsidiaries into an existing SE will result in the raising, ex post facto, of an already agreed – lower – level of participation established on the basis of the regulations applying to the employees involved in participation hitherto.

This would be the case even if a dynamic element of follow-up negotiations was built into the national transposition process. It would be difficult after the event to raise up an existing low level of board-level participation by means of follow-up negotiations. Rather one must proceed on the assumption that employees with strong board-level participation possibilities will no longer be able to make up for the loss of these possibilities in the further development of the SE.

With the SE Directive a historic compromise was reached in Europe on employee involvement in the highest corporate bodies after over 30 years of disagreement. If this is to be taken seriously politically, especially in the face of EU enlargement, and negative effects are to be avoided for strong national systems such as in Germany, the governments of such countries must take the lead in order to prepare the new legal possibilities for enterprises and employees on time.