

European company statute (SE)

Regulation on the Statute for a European Company and
Directive with regard to the involvement of employees

(of 08.10.2001/ Transposition 3 years)

Overview of the European company statute

Individual forms

**Choice of system
and organs**

**Employee
involvement**

European company statute (SE)

Ways of forming an SE

Merger

Public limited-liability companies from **two** Member States can form an SE by merger

Holding

Public and private limited-liability companies from **two** Member States can form a Holding

Subsidiary

Any legal entities governed by public or private law from **two** Member States (or an SE itself) can form a subsidiary-SE

Conversion

A public limited-liability company can convert into an SE if it has had a subsidiary in another Member State for **2 yrs**

European company statute (SE)

Structure

Choice of system



Two-tier system

Management Organ

Supervisory Organ (Board)

One-tier system

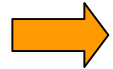
Board =
Administrative Organ

Fixed in the statutes at the time of formation: the draft terms are approved by the General Meeting, which may reserve ratification of the agreement

Member States can enact additional provisions in national company law concerning choice of system related to SE

European company statute (SE)

- **Formation, registration and negotiations (I)**



General provisions:

- **Registration** of the SE is generally **linked to negotiations** on employee involvement (Art. 12 of Regulation):
- **Statutes** must **never be in contradiction** of the negotiated agreement

The **management or administrative organ** draws up **draft terms for the formation including in detail:**

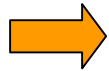
see Art. 20 on mergers , Art. 32 on holdings, Art. 36 on subsidiaries and Art. 37 on conversion

The **General Meeting approves** the draft but may reserve the right to approve the agreement on employee participation

The legality of the formation is scrutinised by the authority in the Member State where the proposed registered office (which will control the question of **arrangements for employee involvement**) is located.

European company statute (SE)

- **Formation, registration and negotiations**



Features of the various formation processes

Mergers

The plan has only to contain information relative to the agreement procedure under Art. 20. Transfer of employees and related rights with registration (Regulation, Art. 29, Para. 4 - but Directive, Art. 13, Para.4: option for member states to retain the employee representation structures)

Holding

Here, the effects on workers must be indicated in the formation plan, option for member states for provisions relative to employee protection (Regulation Art. 34).

Subsidiary company

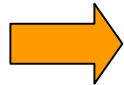
The regulation refers only to national provisions for forming a public limited-liability company (Art. 36). Art. 3 sec. 1 of the Directive stipulates that the formation must be planned and the necessary steps be taken to start negotiations.

Conversion

The registered office may not be transferred at the time of the conversion. The agreement must at least maintain the “acquis” of all aspects of employee involvement.(option for member states: the quorum in the superv. board for decision can be set higher)

European company statute (SE)

- **Structure of the SE and negotiations (I)**

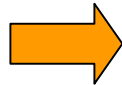


Two-tier system:

- The supervisory board appoints the management board, but the MS can provide for the statutes to grant these rights to the GM, if so for national public limited companies.
- The statutes must fix the number of members of the management board (MS: fix the minimum and/or maximum number)
- Members of the supervisory board are nominated by GM (the agreement on participation remains unchanged); number or fixing: see management board
- Quarterly reporting and regular information on events that can have concrete effect on the company's business
- Request for information by supervisory board; optional for member states: for each member; all members to be kept informed
- The Chairman is elected from among members of the supervisory board; in the case of 50% workers: only a shareholder rep eligible

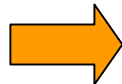
European company statute (SE)

• Formation of the SE and negotiations (II)



Single-tier system

- Number of members of Adm. Board fixed in rules or statutes, the MS fix the minimum or maximum number; in case of participation: at least three members
- Nominated by Gen. Meeting (the agreement remains unchanged)
- Meets at least every three months; every member is entitled to all information
- The Chairman is elected from among the members; in the event of 50% workers, only shareholder rep eligible

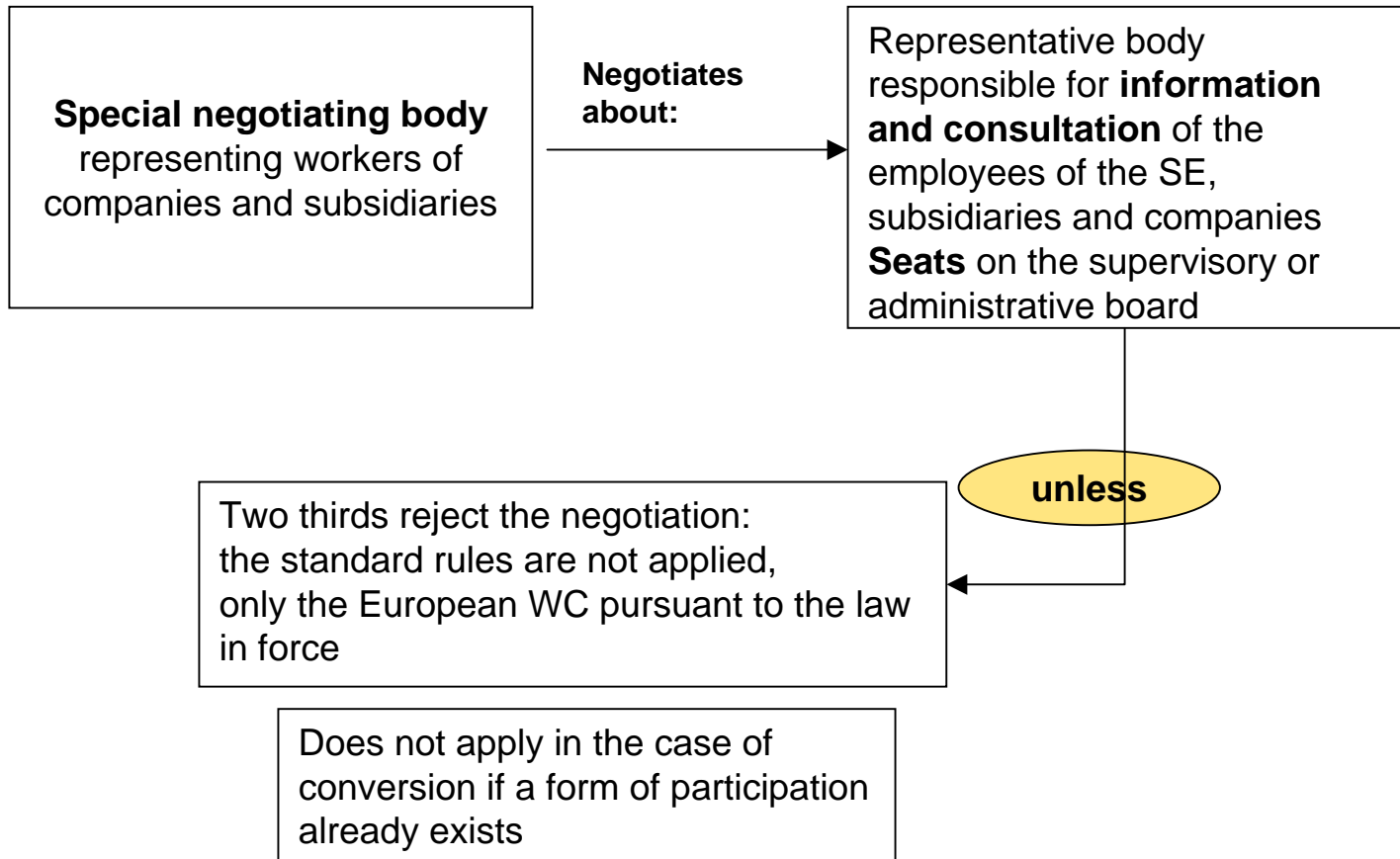


Common provisions

- The statutes establish which areas require approval by the supervisory or administrative board
 - the MS can provide for the supervisory board to decide itself or stipulate in the statutes what should be
- Decision-making; the Chairman has the casting vote
- Non-disclosure of information, if it could affect the company's interests

European company statute (SE)

• Employee participation



European company statute (SE)

• Employee involvement

Negotiations on involvement in run-up to formation of SE

- Member States can provide for the participation of union representatives (non-employees) in the SNB
- The SNB can call upon the assistance of experts (it can also be assisted by a union organisation at Community level)



Willingness to achieve an agreement

- Area of application
- Composition of representative body, information and consultation
- Participation (places in the body, voting procedure, rights)

→ Duration of negotiations: up to 6 months (or if agreed up to 1 year)

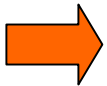
European company statute (SE)

- **Employee participation**

Details on negotiations on participation (I):

- **Stage 1: 2/3 of the votes**

- representing at least 2/3 of the workers
- and workers from at least two States
- decision: not to start or to cancel negotiations



Zero option = only EWC

- **Stage 2/ regulation according to Art. 4 Dir/SE**

- **Stage 3: at least standard rules**

- if no agreement between the parties
- if no agreement reached before the deadline fixed and the governing bodies of the companies approve the continuation of the procedure
- no decision by a 2/3 majority within the SNB

European company statute (SE)

- **Employee involvement**

Details on negotiations on participation (II)

- **The standard rules only apply:**

- in the case of **conversion**, where participation rights already exist
- in the case of **mergers**:
 - where a participation right already existed, extending to at least 25% of the workers
 - where a participation right already existed, covering less than 25% of the workers **and** if the SNB makes a decision on this subject, unless member-states use opt-out
- in the case of the creation of an SE by way of a **holding** or a **subsidiary**
 - where a participation right already existed, extending to at least 50% of the workers
 - where a participation right already existed, covering less than 50% of the workers **and** if the SNB makes a decision on this subject

European company statute (SE)

Employee involvement

Standard rules pursuant to Art. 7 of the Directive

Representative body

Consisting of employees of the SE, its subsidiaries or establishments

Elected or appointed in accordance with the national legislation and / or practice in the Member State

In proportion to the number of employees employed in each Member State

Information and consultation

Questions which concern the SE itself and any of its subsidiaries or establishments situated in another member state or which exceed the powers of the decision-making organs in a single Member State

Regular reports, meet at least once a year, agenda for meetings of the administrative, or the management and supervisory organ.

Special information in the case of exceptional circumstances

Participation

Employees or their representative body shall have the right to elect... a number of members of the administrative or supervisory body

The number shall be equal to the highest proportion in force in the participating companies / The representative body shall decide on the allocation of seats