

Ten years of SE experience



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November 2011

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Background

- SE (Societas Europaea) legislation consists of two intertwined legal acts: Regulation 2157/2001 and Directive 2001/86
- Rules are based on a balanced compromise reached after more than 30 years of intensive debates in the EU and the Member States
- Purpose was to establish a single legal corporate model throughout Europe

Characteristics

- The Directive contains provisions for a legally binding procedure of company-level negotiations on transnational information and consultation bodies (SE Works Council) and on participation at board level.
- Workers' involvement is in accordance with the so-called 'before-and-after principle'.
- Implementation has led to legal pluralism; no uniform statute, but 27 SE forms.

Short history

- SE rules entered into force in October 2004.
- September 2011 >925 SEs registered.
- Only 191 of these SEs can be classified as 'normal', in the sense that they are both operational and have employees.
- The total number of Czech SE companies is 522; this makes up 56% of the total number of SEs in Europe.

The 2008 Consultation

- Social partners agreed: too early to start revision, given the lack of experience of applying the national provisions transposing the Directive.
- BusinessEurope: involvement overly complicated; structured provisions around employee participation and the creation of Special Negotiating Body substantial obstacles to increasing the number of SEs; greater flexibility needed.
- ETUC: size of the body has to be discussed; rights exercised; protection of representatives; what happens in case of restructuring.

Assessment by the EU

- In 2008: too early, procedure is complex, but compromise took 30 years of negotiations
- In 2011: three problematic areas identified, i.e.
 - a) complexity of the procedure for employee involvement;
 - b) lack of legal certainty concerning certain aspects of the negotiation procedure;
 - c) concern that the use of the SE form could have an effect on the rights to employee involvement granted by national or EU law.

Main questions Commission

1. **Opinion on the provided analysis – any additional items**
2. **Revision needed (in parallel with the revision of the Regulation) – scope?**
3. **Other action, what form?**
4. **A dialogue under Article 155 TFEU?**

Deadline 30 September 2011

BusinessEurope

- + The smaller size of the supervisory board
- + Image & promotion of efficient structures

- Interference of SE workers involvement;
distortion national labour frameworks
- Negotiation procedure cumbersome

- Priority is simplification of the Regulation
- Calls for removal of obstacles, in particular
from a company law and taxation perspective

Practical experiences

- + Recognition of workers as important stakeholders**
- + European representation in the board**
- + Clear information and consultation rights**
- Freezing of rights**
- Unclear procedures in case of activation**
- No initiating effect in companies without WP**
- Poor registration a barrier for effective mobilisation of workers**

Workers' involvement a 'burden' – a SEEurope report

- No hard evidence of serious hindrance
- No high incidence in countries where WP is absent
- Lack of proper information
- Other incentives/disincentives determine

Employers fear possible increase in level and scope of employee involvement

See for more: <http://www.worker-participation.eu/About-WP/What-s-new/News-Bulletin/News-Bulletin-worker-participation.eu3>