



SEEurope - Worker participation at board level in the European Company (SE) -
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Case Study Report on Plansee SE

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Table of contents

Abbreviations _____	ii
Definitions _____	ii
1 Introduction _____	1
2 Background information _____	2
2.1 Sector and business activities _____	2
2.2 Corporate governance structure and employee board-level representation prior to transformation _____	2
2.3 Motives and business expectations behind setting up an SE _____	3
3 Process of establishing and agreeing on employee involvement _____	4
3.1 Applicable legislation _____	4
3.2 Preparation of negotiations _____	4
3.2.1 Composition of the Special Negotiating Body _____	4
3.2.2 Preparatory meetings _____	5
3.2.3 Use of experts _____	5
3.2.4 Use of sectoral guidelines (for example, EMU Guidelines) _____	5
3.2.5 Role of trade unions, at national and at EU level _____	5
3.3 Negotiations _____	6
3.3.1 Company proposals _____	6
3.3.2 Employee representatives' response _____	7
3.3.3 Main points of agreement _____	8
3.3.4 Main points of disagreement _____	8
3.3.5 Settlements _____	8
4 Contents of the agreement _____	10
5 Employee involvement before and after transformation _____	12
5.1 Registered under which national legislation? _____	12
5.2 Existing national information, consultation and participation rights _____	12
5.2.1 Austrian works councils _____	12
5.2.2 France _____	12
5.3 Existing transnational information/consultation rights _____	13
5.4 Changes due to the transformation _____	13
5.4.1 Information and consultation at the national level _____	13
5.4.2 Information and consultation through an SE works council _____	13
5.4.3 Participation in the board of directors _____	13
5.4.4 Transnational mix _____	14
5.5 Mandate and input from European trade union confederations _____	14
6 Quality of the new structure _____	15
6.1 Employee board directors _____	15
6.2 Management _____	15
6.3 Trade unions _____	15
6.4 Other stakeholders _____	15
7 Analysis _____	16
References _____	19
Appendix 20	
I. Time line of events according to the reports of the people involved.....	20
II. Agreement on employee involvement (German only).....	21

Abbreviations

Art.	Article
CGT	Confédération générale du travail
CFDT	Confédération française démocratique du travail
EEA	European Economic Area
EMF	European Metalworkers' Federation
EU	European Union
EWC	European Works Council
GMT	Gewerkschaft Metall und Textil (metal and textile workers' union)
GPA	Gewerkschaft der Privatangestellten (white-collar union)
Para.	Paragraph
SE	Societas Europaea
SE WC	SE Works Council
SE/DI	Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees
SE/RE	Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE)
SNB	Special negotiating body

Definitions

Subsidiaries (SE/DI Art. 2 Para. c):

'Subsidiary' of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC.

Concerned subsidiaries (SE/DI Art. 2 Para. d):

'Concerned subsidiary or establishment' means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation.

Employees' representatives (SE/DI Art. 2 Para. e):

'Employees' representatives' means the employees' representatives provided for by national law and/or practice.

Representative body (SE/DI Art. 2 Para. f):

'Representative body' means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE.

Special negotiating body (SE/DI Art. 2 Para. g):

'Special negotiating body' means the body established in accordance with Article 3 to negotiate with the competent body of the participating companies regarding arrangements for employee involvement within the SE.

Involvement of employees (SE/DI Art. 2 Para. h):

'Involvement of employees' means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company.

Information (SE/DI Art. 2 Para. i):

'Information' means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on 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 at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE.

Consultation (SE/DI Art. 2 Para. j):

'Consultation' means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE.

Participation (SE/DI Art. 2 Para. k):

'Participation' means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of the right to elect or appoint some of the members of the company's supervisory or administrative organ, or the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

Standard Rules (SE/DI Art. 7 and Appendix):

In case of failure of negotiations or due to the agreement standard rules apply as defined in the Appendix of the SE/DI, provided the SNB did not refuse to commence negotiations or break them off. The standard rules shall ensure that at least information and consultation rights are granted and under certain conditions they also provide for participation in the competent company organ.

1 Introduction

The aim and purpose of this study is to track the process of transformation of Plansee AG into an SE and the views of the different parties involved, namely the management and works council of the company, the relevant trade unions and the Vienna Chamber of Labour. Company information was gathered mainly from the company website and a current brochure on company facts and figures. The conversion plan, the statutes and the agreements were available at the Austrian commercial register (Gagawczuk, 2006c). In addition, personal interviews were conducted with the parties involved, namely Alois Oberer and Christoph Scheiber, both group works council members at the company in Austria, Mme Ghislaine Charney, the CFDT union delegate and elected secretary of the works council at Cime Bocuze SA, Wolfgang Greif of the white-collar union (GPA), Gustav Zöhrer of the metalworkers' union (GMT) and Walter Gagawczuk of the Vienna Chamber of Labour.

Unfortunately, the management was not prepared to give an interview. As stated by the head of the department of internal communication the company owners, Plansee Group is still privately owned by the Schwarzkopf family, who generally speaking do not give interviews.

Besides giving a timeline and describing the process of transformation from different viewpoints, we present an analysis of results. However, evaluation of actual working practice is limited to the period of 5 months since the transformation took place.

2 Background information

Plansee SE was formed by the transformation of Plansee AG, a public limited-liability company with its headquarters in Reutte (Austria) and consequently governed by Austrian law. In the following, Plansee AG is referred to also as ‘the company’ or ‘Plansee’.

2.1 Sector and business activities

The company operates in the metal sector and is world leader in manufacturing products made of refractory metals and composite materials. Plansee AG operates in Europe, Asia and the US. There are production facilities in Austria, Bulgaria, France, Germany, Japan, Switzerland and the US. Distribution companies are located in Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, Sweden, Taiwan and the UK. The company has a workforce of 2,200 worldwide and generates turnover of € 500 million.

Plansee is one of three divisions of Plansee Holding AG, with a history going back to 1921. It produces high performance materials. The other two divisions are Ceratizit SA (hard metals and tools) and PMG SA (powder metallurgical products), in which Plansee Holding AG holds 50% of the shares, both being seated in Luxembourg. In the last financial year, ending on the last day of February, the group had 5,050 employees worldwide and a consolidated turnover of € 857 million and invested € 67 million.

2.2 Corporate governance structure and employee board-level representation prior to transformation

Plansee had a two-tier structure. The management board had three members. The supervisory board had six members, of whom, in accordance with the Austrian Labour Constitution Act (*Arbeitsverfassungsgesetz*), one-third – that is, two members – was appointed by the Austrian group works council. The term of office of employee representatives on the supervisory board is not laid down in the law and thus can be unlimited. In general, employee members of the supervisory board are not entitled to any extra remuneration, in contrast to the shareholders’ representatives. Nevertheless both groups of representatives have the legal mandate to perform a monitoring function for the sake of company welfare, but in consideration of the interests of the partners and the employees, as well as in the public interest. Each member of the supervisory board is personally liable for their behaviour in this body. In detail, this means that the supervisory board:

- ⇒ monitors the management board;
- ⇒ appoints and dismisses the management board;
- ⇒ approves important decisions, such as acquisition or sale of investments or of parts of the company; closure of parts of the company; acquisition, sales and debiting of property; establishment and closure of subsidiaries; investments that exceed certain amounts in a single business year; borrowing; introduction and closure of business units and products; determination of general principles of company policy; determination of principles regarding profit sharing or share of turnover or pension promises to executives; issue of the power of attorney; as well as the issue of stock options to executives;
- ⇒ scrutinises the annual financial statements;
- ⇒ approves the annual financial statements; and

⇒ calls meetings of the general meeting of shareholders.

2.3 Motives and business expectations behind setting up an SE

In December 2005, the management informed the employee representatives on the supervisory board of its intention to transform the company into an SE. In order to be able to transform into an SE, the company must have its registered office and head office within the Community and must have had at least one subsidiary governed by the law of another Member State for at least two years.

The seat of Plansee is in Reutte (Austria), which is within the Community. For many years, the company has been the major shareholder in companies seated within other EU member states. The subsidiaries involved in the transformation are Société Plansee SARL and Cime Bocuze SA in France, Plansee Metals Holding Ltd in the UK and Plansee Nordic AB in Sweden, besides Plansee Metall GmbH in Austria.

The motive brought forward by the management in favour of this transformation – which can be found in the written agreement on the involvement of employees – was that it was in the interest of the owner, Plansee Holding AG, that all three business units have the same organisational structure (a one-tier structure), which the two other business units already had. This is possible in Austria only by the foundation of an SE.

3 Process of establishing and agreeing on employee involvement

3.1 Applicable legislation

The foundation is governed by Austrian legislation, namely the SE Law (*SE-Gesetz*) and the Labour Constitution Act (*Arbeitsverfassungsgesetz*).

3.2 Preparation of negotiations

In order to be registered the company must submit a written agreement on the involvement of employees (SE/DI Art. 12 Para. 2). The management negotiates this agreement with the special negotiating body (SNB), which consists of employees representing the employees of the companies concerned. The number of employee representatives per country or company concerned depends on the relative proportion in comparison with the total number of employees of the SE. The basic rule is at least one SNB member per country.

3.2.1 Composition of the Special Negotiating Body

The following companies were affected by the transformation:

- ⇒ Plansee AG and Plansee Metall GmbH (Austria), with 1,333 employees
- ⇒ Société Plansee SARL and Cime Bocuze SA (France), with 76 employees
- ⇒ Plansee Nordic AB (Sweden), with 2 employees
- ⇒ Plansee Metals Holding Ltd (UK), with 11 employees

In total 1,422 employees were affected. The SNB consisted of ten members from Austria, two members from France, and one member each from Sweden and the UK. At the beginning of the process it seemed that the management was not aware of the need for negotiations with the SNB representing all employees of the company. After examining the legal framework, however, and obviously realising that there was no way of circumventing negotiations, the management invited employee representatives in all the companies concerned to participate in the negotiations by sending them a letter of information and attaching a response sheet with a choice of four options, which are:

1. We/I Mr/Mrs in our/my capacity as employee representative(s) of [name of company] with its registered office in [place of registered office] want to avail ourselves/myself of the possibility to delegate an employee body and, as the case may be, employees (where no employee body exists) to the special negotiating body on 25 January 2006, hence the employee representative(s) Mr/Mrs will participate in the special negotiating body on 25 January 2006; or
2. We/I Mr/Mrs in our/my capacity as employee representative(s) of [name of company] with its registered office in [place of registered office] waive the possibility to delegate an employee body and, as the case may be, employees (where no employee body exists) to the special negotiating body on 25 January 2006, provided that the subject of the special negotiating body on 25 January 2006 is exclusively limited to questions regarding the participation of employee representatives in Plansee SE, so that in case of a future convening of the special negotiating body for a special reason we/I are/am free to participate in it; or
3. We/I Mr/Mrs in our/my capacity as employee representative(s) of [name of company] with its registered office in [place of registered office] waive the possibility to delegate an employee body and, as the case may be,

Section 1: Introduction

employees (where no employee body exists) to the special negotiating body on 25 January 2006;

4. We/I Mr/Mrs in our/my capacity as employee representative(s) of [name of company] with its registered office in [place of registered office] herewith authorise the employee representative of Plansee, Mr Alois Oberer, to represent us/me regarding our/my concerns as employee representative(s) in the special negotiating body of 25 January 2006 and, if necessary, to exercise our/my voting right there.

Representatives of all four foreign subsidiaries chose option four. In the case of the British company, with 11 employees, and the Swedish company, with 2 employees, both responsible for distribution, it is understandable that they authorised the Austrian representatives to represent them because the effort required to take an active part in the negotiations and subsequently in transnational information and consultation, or even participation, might be considered disproportionate in comparison to the expected benefit. Those two countries are not examined further. In the case of the two French companies, where 76 employees are concerned, the two representatives of the works council did not take part in the negotiations on 25 January 2006 because they thought that the meeting would only be a preliminary affair and would exclusively treat the question of board representation, a matter of little concern for the French representatives.

As a consequence of the above presented quitclaim deeds, the special negotiating body consisted only of Austrian employee representatives – 10 in number – with one member (Alois Oberer) authorised to represent the four foreign subsidiaries and to exercise their voting rights at this meeting.

3.2.2 Preparatory meetings

The employee representatives said that they had several informal meetings with the management in the course of January. The aim of these meetings was to find out how the land lay. Precise dates and contents are not available.

3.2.3 Use of experts

External experts were not involved in either the preparation of negotiations or the negotiations.

3.2.4 Use of sectoral guidelines (for example, EMU Guidelines)

Sectoral guidelines were not used in either the preparation of negotiations or the negotiations.

3.2.5 Role of trade unions, at national and at EU level

As soon as the employee representatives at Plansee were informally informed of the establishment of an SE, they got in touch with the international secretary of the white-collar trade union. They arranged a meeting in Vienna involving the metalworkers' union (GMT) and the Chamber of Labour in Vienna, also on the day – 19 December 2005 – when the employee representatives were informed officially about the case by the management. At this meeting the employee representatives were informed about their legal rights and duties and were given advice on how to proceed, especially on the legal timeframe for negotiations on an agreement on employee involvement and the need to establish an SE Works Council (SE WC). In the course of January, the trade unions and the Vienna Chamber of Labour repeatedly gave advice to the

employee representatives at the company by phone and even drafted an agreement by the beginning of February, by which time the Plansee agreement had already been signed, however. The national trade unions and the Chamber of Labour were not involved in the negotiations themselves.

According to the trade union, it was planned to involve the European Metalworkers' Federation (EMF) as well. However, when the representative of the metalworkers' union had the opportunity to inform the EMF officially, everything was already done.

3.3 Negotiations

Official negotiations took place on 30 January 2006. There was no other negotiating round.

3.3.1 Company proposals

The management itself was either present, three in number, or represented by the manager responsible for finance and controlling. When informing the employee representatives about the conversion plan in December, the management also proposed an agreement on employee involvement. The proposal is structured in seven sections, summarised as follows:

1. Initial position

The management board of Plansee GmbH has decided to transform the company into Plansee SE. The motive behind this transformation is to have a one-tier structure in all three divisions. Two of them, Ceratizit and PMG, already have a one-tier structure. In Austria, it is not possible to opt for the one-tier structure, except with the SE.

2. Companies concerned

The agreement covers Plansee SE itself, as well as subsidiaries that have their registered office within the EU or EEA. Those subsidiaries are: Plansee Metall GmbH (Austria), Cime Bocuze SA (France), Société Plansee SARL (France), Plansee Metals (UK) and Plansee Nordic AB (Sweden). If Plansee GmbH (Germany) becomes a subsidiary again in the future the agreement will also cover it, without undergoing significant structural change.

3. Maintenance of existing employee involvement

All existing rights regarding information, consultation and participation shall be maintained after the conversion into Plansee SE. Involvement rights existing in Plansee GmbH and affected subsidiaries granted by national legislation are not touched by this agreement and shall be maintained.

4. Considerable structural changes

The agreement shall also apply in the case of considerable structural changes, even if the number of employees in Plansee SE or any one of the subsidiaries changes to a great extent. Considerable structural changes refers to transfer of seat, change of corporate governance structure, closure of Plansee SE, cutbacks (concerning more than 30% of the employees) or transfer of companies or plants within the EU to other countries, merger of companies or plants of Plansee SE as long as they employ more than 500 people, as well as the acquisition of shares in other companies by Plansee SE, insofar as they have a considerable impact on the structure of Plansee SE (at least 500

Section 1: Introduction

employees producing at least 30% of the turnover), as well as a considerable change in the number of employees in the group. If Plansee SE invests in further subsidiaries and exercises a dominant influence over them, then they are regarded as affected subsidiaries within the meaning of point 2. In case of a structural change that affects employee involvement, the board of directors has to invoke the SNB on its own initiative, at the written request of 30% of the employees or at the written request of a body representing at least 30% of the employees. If the SNB is invoked and the constituting meeting was more than 5 years ago; or if a body representing the employees asks for it; or the majority of a subsidiary's workforce that waived their participation in the first constituted SNB asks for it; or the composition of the workforce has changed in a way that has implications for the composition of the SNB; then the SNB has to be constituted anew.

5. Participation

Participation rights granted beforehand will remain in force after conversion into Plansee SE. The quota of employee representatives on the board of directors shall remain in accordance with the Austrian one-third participation (*'Drittelbeteiligung'*) provided by the Austrian Labour Constitution Act, with the adjustment that for the number of employee representatives it is not the number of members of the supervisory board elected by the annual general meeting that is decisive but the number of members of the board of directors elected by the annual general meeting. The principle of one-third participation is also applicable to committees of the board of directors, except those dealing with issues regarding the relationship between the company and the executive directors.

6. Expenses

All expenses related to the fulfilment of this agreement shall be covered by the company, within reason.

7. Period of validity

The agreement becomes effective simultaneously with the registration of Plansee SE and is valid for ten years in the first instance. It shall be extended automatically by four years if it is not terminated by the board of directors of Plansee SE or by employee representatives representing at least 10% of the employees of the group in writing six months prior to the end of the first period of validity. Then the SNB has to be invoked by the board of directors to negotiate a new agreement with the management. If no agreement is reached, then the standard rules shall apply. If this agreement is terminated by either party, it shall remain in force until a new agreement is reached or negotiations fail.

3.3.2 Employee representatives' response

The employee representatives were not happy with the management's proposal because it did not provide for an SE WC. Consequently, they tried to negotiate it into the agreement. However, very soon it became clear to the employee representatives that the management would not negotiate for six months, as provided by the legislation, but would rather stop the process of conversion and leave everything as it was. It also soon became clear to the employee representatives that the management would under no circumstances accept the establishment of an SE WC

Section 1: Introduction

at that point in time, that is, when the transformation was taking place. Consequently they aimed to reach a compromise that would give them – the Austrian works council – the right to establish an SE WC later on without needing the support of employee representatives in other subsidiaries and without needing to negotiate it.

3.3.3 Main points of agreement

Agreement could be reached without any changes in the following sections: initial position, companies concerned, maintenance of existing employee involvement, expenses, period of validity.

3.3.4 Main points of disagreement

The major issue of disagreement concerned the establishment of an SE WC, which the company did not want at all and which the employee representatives did not want to waive.

3.3.5 Settlements

In the end the management's highly-motivated time schedule strengthened the position of the employee representatives in the negotiations because the management wanted to complete the transformation in mid February 2006 at the latest. In addition, it seemed that the management had reviewed the employee representatives' demands for an SE WC again and, according to the employee representatives, it was suddenly no longer a problem to add an appropriate section to the agreement. However, the establishment of the SE WC at the date of transformation was still not acceptable to the management. Nevertheless, a 'sleeping' SE WC, as the employee representatives call it themselves, was agreeable to both parties. The name is related to the possibility that a body representing at least 1,000 employees can establish an SE WC anytime without having to negotiate establishment or needing support from other subsidiaries. Every body representing at least 150 employees will be a full member, and every body representing at least 50 employees will be invited to meetings as a guest. Practically this means that the Austrian group works council can establish an SE WC at any time. However, only the Austrian group works council can do this.

Below we present the modifications of the management's proposal – that is, important modifications of two sections and the creation of one more section – in greater detail:

4. Considerable structural changes

The limitation that only cutbacks of more than 30% of the employees were considered as considerable structural changes was deleted. In addition, the limitation that only changes that concern at least 500 employees who produce at least 30% of the turnover of Plansee SE are considered as having a considerable impact on the structure of Plansee SE was deleted. In addition, the threshold of employees or a body representing employees was reduced to 10%.

5. Participation

This section was amended in respect of the appointment of employee board members. It is stated that until an SE WC is established the works council of Plansee/Ceratizit shall appoint members to the board. When an SE WC is

Section 1: Introduction

established, it shall appoint the employee board members with a two-thirds majority.

6. SE Works Council

This section was added (see below for details).

4 Contents of the agreement

The agreement on the involvement of employees in Plansee SE was signed on 30 January 2006. The final agreement is structured in eight sections, summarised below:

1. Initial position

The management board of Plansee GmbH has decided to transform the company into Plansee SE. The motive of this transformation is to have a one-tier structure in all three business units. Two of them, Ceratizit and PMG, already have a one-tier structure. In Austria, it is not possible to opt for the one-tier structure, except with the SE.

2. Companies concerned

The agreement covers Plansee SE itself, as well as subsidiaries that have their registered office within the EU or EEA. Those subsidiaries are: Plansee Metall GmbH (Austria), Cime Bocuze SA (France), Société Plansee SARL (France), Plansee Metals (UK) and Plansee Nordic AB (Sweden). In case Plansee GmbH (Germany) becomes a subsidiary again, the agreement will also include it, without bringing about a considerable structural change.

3. Maintenance of existing employee involvement

All existing rights regarding information, consultation and participation shall be maintained after conversion into Plansee SE. Involvement rights existing in Plansee GmbH and affected subsidiaries that are granted by national legislation are not touched by this agreement and shall be maintained.

4. Considerable structural changes

The agreement shall apply also in the case of considerable structural changes, even if the number of employees in Plansee SE or any one of the subsidiaries changes to a great extent. 'Considerable structural changes' refers to transfer of seat, change of corporate governance structure, closure of Plansee SE, cutbacks or transfer of companies or plants within the EU to other countries, merger of companies or plants of Plansee SE as long as they employ more than 500 people, as well as the acquisition of shares of other companies by Plansee SE, insofar as they have a considerable impact on the structure of Plansee SE, as well as the number of employees in the group. If Plansee SE invests in further subsidiaries and exercises a dominant influence over them, then they are seen as affected subsidiaries within the meaning of point 2. In case of a structural change that affects employee involvement, the board of directors has to invoke the SNB on its own initiative; at the written request of 10% of the employees; or at the written request of a body representing at least 10% of the employees. If the SNB is invoked and the constituting meeting was more than 5 years ago; or if a body representing employees asks for it; if the majority of a subsidiary's workforce that waived their participation in the first constituted SNB demands it; or if the composition of the workforce changes in a way that changes the composition of the SNB, then the SNB has to be constituted anew.

5. Participation

Existing participation rights will remain in force after conversion into Plansee SE. As long as no SE WC is established, the employee members of the board

Section 1: Introduction

of directors shall be appointed by the Austrian works council. The quota of employee representatives on the board of directors shall remain in accordance with the one-third participation provided by the Austrian Labour Constitution Act, with the adjustment that, for the number of employee representatives, it is not the number of supervisory board members elected by the annual general meeting that is decisive but the number of members of the board of directors elected by the annual general meeting. The principle of one-third participation is also applicable to committees of the board of directors, except those dealing with issues regarding the relationship between the company and the executive directors.

6. SE Works Council

An SE WC is established when a body representing more than 1,000 employees demands it. If an SE WC is established, only bodies representing more than 150 employees are entitled to appoint a member to the SE WC. The SE WC has the right to invite employee representatives as guests to meetings who are not represented on the SE WC and who represent at least 50 employees.

7. Expenses

All expenses related to the fulfilment of this agreement shall be covered by the company, within reason.

8. Period of validity

The agreement shall come into force simultaneously with the registration of Plansee SE and shall be valid for ten years in the first instance. It shall be extended automatically by four years, if it is not terminated by the board of directors of Plansee SE or by employee representatives representing at least 10% of the employees of the group in writing six months prior to the end of the first period of validity. Then the SNB has to be invoked by the board of directors to negotiate a new agreement with the management. If there is no agreement, then the standard rules shall apply. If this agreement is terminated by either party, it shall remain in force until a new agreement is reached or negotiations fail.

5 Employee involvement before and after transformation

5.1 Registered under which national legislation?

The Plansee SE was established under Austrian law.

5.2 Existing national information, consultation and participation rights

5.2.1 Austrian works councils

Employees in Austria are represented by works councils at plant level. According to the group works council, the works council structure chosen at Reutte (Austria) is illegal and the solution agreed with the management is not provided for by law. The Austrian Labour Constitution Act provides for a works council at any site, but not for a single body if there are several sites at the same location. In this company, the works council agreed with the management on the establishment of a single works council for all three sites at Reutte for efficiency reasons. In Reutte, there are in total 25 works council members, of whom 14 represent blue-collar and 11 represent white-collar workers. In Austria, works councils and trade unions are legally separate from each other, but in practice most works council members are members of a trade union. In this company, the metalworkers' trade union (GMT) and the white-collar workers' trade union (GPA) are involved.

The group works council, consisting of six members, is also not completely in accordance with the law, but it was agreed between the works councils in the two locations – Reutte and Liezen (Austria) – that it is more favourable to the works council at the plant in Liezen, which appoints two members, due to agreement between the works council members in Reutte and Liezen. The works councils nominate members to the supervisory board, but the group works council appoints them. In Austria, the group works council is entitled to appoint one-third of the members of the supervisory board of joint-stock companies and, under certain circumstances, also of the supervisory board of private limited companies. In the case of Plansee, two out of six members of the supervisory board were appointed by the employees.

5.2.2 France

The two French subsidiaries are Plansee SARL and Cime Bocuze SA. Plansee SARL is a commercial representation with only nine employees. There is no employee representation. Its registered office has recently moved from Pontoise (Paris region) to Saint Pierre en Faucigny (Haute-Savoie), where the production subsidiary Cime Bocuze SA is located.

Cime Bocuze SA, a public limited company, is a leading producer of heavy tungsten-based alloys, including ammunition for tanks and guns. It also has a research and development centre. Until 1999 it was part of the French public ammunition group GIAT, which then sold a 66% share to Plansee. GIAT still holds a minority one-third share. Cime Bocuze has 68 employees, with a high proportion of professional staff. According to French labour law, employees at establishments with more than 50 employees have the right not only to workforce delegates (*délégués du personnel*) for individual and collective grievances, but also to a works council (*comité d'entreprise*) with information and consultation rights. In the case of Cime Bocuze, the management has made use of the possibility offered to small firms with less than 200 employees to merge these two types of representation into a 'single workforce delegation'. As a former public sector firm, Cime Bocuze is traditionally unionised.

Section 1: Introduction

The two main union confederations, CFDT and CGT, are present and each has a union delegate (*délégué syndical*) for the purpose of collective bargaining. The workforce delegates are elected on union lists. The CFDT won the majority in these elections, the CGT has the majority in the first electoral body (blue- and white-collar workers), whereas the CFDT has the majority in the second (professional and managerial staff, engineers, and so on). The CFDT union delegate, Mme Ghislaine Charney, was elected secretary of the works council. According to French law, the works council delegates two representatives to the board of administrators (*conseil d'administration*), where they have only a consultative voice. Mme Charney was elected representative of the professional and managerial staff and a CGT unionist representative of blue- and white-collar workers.

5.3 Existing transnational information/consultation rights

Before the establishment of the SE, no official transnational information and consultation procedures were in place. Actually, the Plansee Holding AG has as yet not established an EWC in any of the three divisions: Plansee AG, Ceratizit and PMG. On the one hand, initiatives from the works council have failed due to the unwillingness of the management which seems to be at pains to apply legal constructions that do not make it possible to establish an EWC, for example, 50:50 ownership so none of the owners has a dominant role. On the other hand, the Austrian works council members report that they have failed because colleagues in other European countries have not supported their initiatives. This is especially true of the two divisions that have their seat in Luxembourg. As a consequence, employee representatives there would have to ask officially for the establishment of an EWC. So far, it seems the establishment of an EWC has not been in their interest, although they are among the smaller parts of the divisions and so would benefit most from the establishment of an EWC. As a result of this failure to establish an EWC in the other two business units, it was not particularly surprising that the management did not want to establish an SE WC when transforming Plansee AG into Plansee SE.

5.4 Changes due to the transformation

5.4.1 Information and consultation at the national level

Information and consultation, as well as collective bargaining in national establishments remains untouched by the agreement on the involvement of employees.

5.4.2 Information and consultation through an SE works council

An SE works council was not established in connection with SE foundation. However, it can be established as soon as a body representing at least 1,000 employees seeks to do so. There is no need for negotiations with the management on this matter.

5.4.3 Participation in the board of directors

The unitary board of Plansee SE consists of five members. As before conversion, employees are entitled to nominate one-third of the members. In this case – and according to the Austrian practice of one-third participation, which means that the number of employee representatives is always rounded up – two out of five members of the board of directors of Plansee SE are employee representatives. They are the representatives who were previously members of the supervisory board.

5.4.4 Transnational mix

The employee members of the board are all appointed by the Austrian group works council. There is no transnational mix.

5.5 Mandate and input from European trade union confederations

So far, the European trade union confederations – in this case the EMF – have not been involved, but were informed about the establishment of the SE and the content of the agreement. The two works council members said that they wished that the EMF would be more supportive in efforts to get in touch with employee representatives of the same group in other countries in due time, especially when it is difficult to contact them directly due to language difficulties.

6 Quality of the new structure

6.1 Employee board directors

Both employee members of the board report that they have had difficulty adjusting to their new role. Both are aware of their increasing responsibility, as well as their involvement in daily business and their increasing financial liability. Alois Oberer said that he asks himself every day whether he really wants to have all of these responsibilities, 'some of them, sure, but all of them?' Additionally, the frequency of meetings increased from four to six per year, which is perceived as a burden for the full-time works council members sitting on the board. The employee board members also said that it is difficult not only for them to get used to their new role, but also for the management. However, the management is not handling this issue proactively, but reactively by waiting to see what the employee representatives propose. Consequently, the employee representatives see that it is up to them to obtain the information they are entitled to, even if this means a burden on their personal resources. Overall, both said that their standing on the board of directors had been strengthened in comparison to the supervisory board. However, it will take them some time to learn the ropes and to find out how the land lies.

Although the establishment of an SE WC could not be achieved, the employee representatives are content with the agreement.

6.2 Management

No information is available because the management was not prepared to give an interview.

6.3 Trade unions

The international secretaries of the trade unions are both sorry that an SE WC could not be established, but added that it cannot be seen as a failure of negotiations in this particular case. Looking at the company, with 94% of the workforce in Austria, the agreement reached is satisfactory. Both said that they are convinced that the employee representatives acted in the best interests of the employees.

6.4 Other stakeholders

The representative from the Vienna Chamber of Labour is convinced that the employee representatives in the company were very well informed and knew exactly what they were doing. Certainly, the final agreement did not come about by accident; the employee representatives knew their limits and came to an agreement with the management on that basis. There is nothing wrong with the agreement, especially with one-third participation in a one-tier corporate governance structure, even if it does not look very European at first sight.

7 Analysis

At first sight, it is striking that an SE WC has not been established, but participation in the board of directors was never on the table. As the management was not prepared to give an interview, their motives remain in the dark. For the employee representatives it was obvious that the management was not prepared to grant them any rights not already in place. Transnational information and consultation would have been one such right. In addition, it seemed at the beginning of the negotiations that the management was not fully aware of the importance of negotiations on the agreement on employee involvement and, related to that, the need to involve employees of all affected subsidiaries. However, as already mentioned, later on the management informed all entities and gave the employee representatives the opportunity to take part, to waive their rights or to pass on their voting rights to the Austrian works council.

First of all, the most obvious issue is whether the agreement is legally void. For that purpose it is important to see whether the constitution of the SNB was in accordance with the law and whether an agreement must include transnational information and consultation procedures. As all employee representatives were informed and signed a quitclaim deed, in which they authorised Alois Oberer, works council member in Reutte, to represent their interests and exercise their voting rights, it can be assumed that the SNB was constituted in accordance with the law, even if it consisted only of members from Austria. In fact, employee representatives cannot be forced to take part personally in negotiations. However, one remark must be made regarding the quitclaim deeds. It is obvious that the dates for the first meeting of the SNB in the quitclaim deeds, 25 January 2006, and the actual date of the constituting meeting of the SNB and signing the final agreement, 30 January 2006, differ. This discrepancy is clumsy to say the least and might even constitute grounds for the employee representatives authorising Alois Oberer with their representation to claim the agreement null and void, especially given that they did not take part in the negotiations on 25 January due to their tight schedule, though they might have been available on 30 January. Nevertheless it is not known whether such endeavours are seriously being considered by any of the foreign employee representatives currently.

Besides the properly constituted SNB, the question of the legal validity of the agreement concerns whether all components mentioned in SE/DI Art. 4 Para. 2 must be contents of an agreement or if the autonomy of the parties has priority. According to the group of experts (Group of Experts 'SE', 2003), the autonomy of the parties is absolute. Consequently, the list given in SE/DI Art. 4 Para. 2 can be seen only as 'purely indicative and does not limit at all the possibility for the parties, either to ignore some of these elements validly, or to add others' (Group of Experts 'SE', 2003:112). Furthermore, it is open who would have the right to bring a claim against the agreement. The parties agreed in full knowledge and a judge would refer to the autonomy of the parties (Gagawczuk, 2006a).

It is doubtful that the legislator intended companies to be able to exclude information and consultation procedures from employee involvement when participation rights have been agreed. Nevertheless, an agreement without information and consultation, but with participation is valid in the case of establishing an SE by means of transformation, as long as the same rights are granted in the SE as were granted previously (SE/Di Article 4 Paragraph 4). This applies to the Plansee agreement.

Section 1: Introduction

Regarding the negotiations on the agreement on employee involvement, it is striking that the time frame was only one and a half months instead of the 6 months laid down in the law. This time pressure from the management's side seemed to be disadvantageous for the employee representatives, but turned out to benefit them in the end because the management wanted to realise the transformation as soon as possible in order to start as an SE with the new business year. By compromising with the management on the tight schedule of the transformation, it was easier to reach agreement on other issues, such as the 'sleeping' SE WC. However, the trade unions and the Vienna Chamber of Labour expressed their unhappiness with the tight schedule. All three representatives interviewed said they wished they had been involved earlier in the process, so they could have directly influenced the outcome of negotiations and supported the employee representatives, as well as involving the EMF. They all mentioned their concerns about another Strabag.¹ Overall, the trade unions and the Vienna Chamber of Labour are not happy with the resulting agreement, but accept it with regard to the particular configuration of Plansee SE and stress the one-third participation on the board of directors.

As regards the agreement, the question is whether it can be considered 'European' in every dimension. At the first sight, this agreement on employee involvement cannot be considered European at all due given the Austrian works council's sole right to appoint members of the board and the fact that only a body representing at least 1,000 employees – in practice, only the Austrian works council – has the right to establish an SE WC. In the case of structural changes, only a body representing at least 10% of employees can ask to recommence negotiations, meaning that again foreign subsidiaries cannot act without the support of the Austrian works council. Especially given the configuration of Plansee SE it stands to reason that the thresholds could have been chosen differently in order to give foreign subsidiaries a chance of having a say on their own initiative. Nevertheless, this question of not being particularly European should not be exaggerated. In fact, 94% of employees are located in Austria and the three foreign subsidiaries did not want to take part in the negotiations themselves, but authorised Alois Oberer to represent their interests. This might be seen as an indication that they were not interested in transnational interest representation within the company at all, but also as indicating a trusting relationship between the Austrian works council and the foreign subsidiaries.

Has the Austrian works council in fact represented the workers of foreign subsidiaries? One indication of acceptance of this responsibility for the workforce of the foreign subsidiaries is the fact that the works council arranged with the management that the agreement signed on 30 January 2006 had to be translated and sent to the foreign subsidiaries. However, the agreement has not yet reached the French subsidiaries.² Unfortunately, we do not have any information on the other subsidiaries. When examining the actual outcome of the negotiations, the agreement does not look very European or very integrative because it requires the involvement of the Austrian works council in negotiations to set up an SNB or the SE WC. From the viewpoint of the Austrian works council, however, it is understandable that it

¹ Please see SE-factsheets for details on the Strabag case (<http://www.seeurope-network.org/homepages/seeurope/secompanies.html>)

² The French employee representatives have not even been informed about the outcome of the negotiations. The CFDT delegate has decided to initiate an enquiry via her union federation and the EMF (European Metalworkers' Federation).

Section 1: Introduction

agreed to create a 'sleeping' SE WC which they – and only they – can 'awaken' at any time without further negotiations, given the history of Plansee Holding AG regarding the establishment of EWCs in the other two divisions and the lack of support from employee representatives in other countries. In the interview, the Austrian works council members made it clear that the defined thresholds are not laid down to exclude their European colleagues or to protect the Austrian workforce, but to give the Austrian works council the opportunity to take the initiative at any time without requiring explicit support from employee representatives in foreign subsidiaries. However, it remains to be seen whether the Austrian works council supports the idea of transnational employee involvement.

The employee board members are aware of their strengthened role in a one-tier corporate governance structure, although it involves increased personal financial responsibility and personal effort. In fact, the employee directors have the same rights and duties as the other three directors, also regarding remuneration: the directors appointed by the shareholders do not receive any extra remuneration for their activities on the boards of directors or supervisory boards of the 62 affiliate companies,³ so the employee directors do not either. Overall, the main issue in relation to the working practices of the board of directors of Plansee SE is that both sides are still unfamiliar with the expanded role of the employee representatives. Reflecting the general attitude of the Plansee management, the employee representatives have to ask the right questions and demand information to which they are entitled. The management is not proactive. By and large, the employee representatives stated that the problem is not understanding the legal texts, but rather their practical implications and that they wanted a contact person familiar with employee representation within the framework of one-tier corporate governance to enable them to learn the ropes by information exchange rather than by trial and error.

³ The management board or executive directors of a division are usually also members of the supervisory board or the board of directors of subsidiaries.

References

- Charney, Ghislaine (2006) telephone interview with Udo Rehfeldt on 06-07-2006.
- Gagawczuk, Walter (walter.gagawczuk@akwien.at) (2006c) AW: noch mal Plansee. Personal e-mail to Sandra Schwimbersky (sandra.schwimbersky@web.de) on 07-07-2006.
- Gagawczuk, Walter (2006b) Personal interview with Sandra Schwimbersky on 29-06-2006.
- Gagawczuk, Walter (walter.gagawczuk@akwien.at) (2006a) Plansee – Fragen. Personal e-mail to Michael Stollt (mstollt@etui-rehs.org) on 06-03-2006.
- Greif, Wolfgang (2006) Personal interview with Sandra Schwimbersky on 29-06-2006.
- Group of experts 'SE' (2003) Working Paper N° 17: Content of the Agreement – Article 4 of the Directive. Available at: http://www.seeurope-network.org/homepages/seeurope/file_uploads/mergedworkingpapers-en.pdf [Accessed 14 July 2006]
- Oberer, Alois and Scheiber, Christoph (2006) Personal interview with Sandra Schwimbersky on 03-07-2006.
- Oberer, Alois (alois.oberer@plansee.com) (2006) Antwort: kurze Nachfrage zum Interview. Personal e-mail to Sandra Schwimbersky (sandra.schwimbersky@web.de) on 05-07-2006.
- Plansee Holding AG (2006) www.plansee.com
- Plansee Holding AG (2006) Neuer Umsatzrekord zum 85. Geburtstag der Plansee-Gruppe. Press Release of 06-07-2006. Available at: http://www.plansee.com/news_detail_301_DEA_HTML.htm [Accessed 07-07-2006]
- Plansee Holding AG (2006) The Plansee Group – Facts & Figures 2006.
- Zöhrer, Gustav (gustav.zoehrer@gmtn.at) (2006) Antwort: AW: Antwort: WG: Plansee Interview. Personal e-mail to Sandra Schwimbersky (sandra.schwimbersky@web.de) on 06-07-2006.

Appendix

I. Time line of events according to the reports of the people involved

Date	Event
January 2005	Christoph Scheiber informs Wolfgang Greif that the establishment of an SE might be an option for Plansee GmbH at a GPA conference on the European Company
December 2005	Christoph Scheiber calls Wolfgang Greif and asks for support
Around 10.12.05	Wolfgang Greif informs Walter Gagawczuk that Plansee GmbH plans to establish a SE
19.12.05	Meeting of Walter Gagawczuk, Wolfgang Greif, Gustav Zöhner, Alois Oberer and Christoph Scheiber at GPA Vienna
19.12.05	The management board informs the employee representatives officially about the plan to establish an SE
January 2006	Walter Gagawczuk gives advice to Wolfgang Greif, and twice to Alois Oberer
January 2006	Several consultations with Wolfgang Greif and Gustav Zöhner by the employee representatives
Mid January 2006	Quitclaim deeds are signed by the employee representatives in the four foreign companies concerned
Mid January until 25.01.06	Preparation of an agreement by Gustav Zöhner, Wolfgang Greif and Walter Gagawczuk
25.01.06	According to quitclaim deeds and Gustav Zöhner this was to be the date of the constituting meeting of the SNB. According to Gustav Zöhner it was cancelled and it seemed that SE foundation was postponed to 1 March 2006
30.01.06	Constituting meeting of the SNB and signing of the final agreement
31.01.06	Decision of the general assembly to transform Plansee GmbH into Plansee AG as of 31.08.05
07.02.06	Walter Gagawczuk sends his remarks regarding the prepared agreement by e-mail to Wolfgang Greif
09.02.06	Transformation of Plansee AG into Plansee SE

II. Agreement on employee involvement (German only)