



6 October 2011

EMPLOYEE INVOLVEMENT IN THE EUROPEAN COMPANY (SE)

Introduction

1. On 5 July 2011, the European Commission published a first-phase consultation of Social Partners under Article 154 TFEU on the possible review of directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees – SE directive.

2. This initiative is being run by the European Commission in parallel to the ongoing review of regulation 2157/2001 of 8 October 2001 on the Statute for a European Company – SE regulation. It was announced in the Commission's 2011 work programme as a simplification initiative.

3. This position paper aims to assess whether the provisions of the SE directive have been an obstacle barring the development of SEs as a company form, and to respond to the issues raised by the Commission in its consultation document, in particular regarding the need to launch EU action to revise this directive.

BUSINESSEUROPE comments

4. According to the European Commission, there were 595 SEs on 25 June 2010. The number of SEs has increased in recent years but it remains limited compared with the number of companies that are within the potential scope of the "statute".

5. The SE Statute is an optional framework which adds up to existing company forms in the Member States. Therefore, the limited take-up of the SE form reflects in part companies' free choice.

6. A number of positive drivers, such as for example the smaller size of the supervisory board, has positioned the SE as an attractive company form compared with other national forms of companies in some countries like Germany and the Czech Republic.

7. In order to increase the attractiveness of SEs in other EU countries, BUSINESSEUROPE is calling for the removal of obstacles, in particular from a company law and taxation perspective. More information on these obstacles and possible solutions can be found in BUSINESSEUROPE's position paper on the "results of the study on the operation and the impacts of the Statute for a European Company" of 23 May 2010.

8. In terms of employee involvement, the SE directive has interfered with national industrial relations systems since the time of transposition in countries where the concept of employee participation, as defined in the Directive, did not exist before its adoption.



9. This interference is a source of concern for BUSINESSEUROPE given our strong attachment to having the diversity of national industrial relations systems respected by EU laws.

10. The SE directive is articulated around the “before and after principle”. Its objective is to ensure that employee pre-existing national involvement rights are not lost as a result of companies’ decision to become an SE.

11. The study published by EUROFOUND¹ in spring 2011 on “employee involvement in companies under the European Company Statute” has concluded that “codetermination rights in the supervisory board were secured or even improved” following the creation of an SE.

12. The study also showed that SEs located in countries where the concept of employee participation is not part of national practices and tradition have been able to maintain their pre-existing practices in terms of employee information and consultation. However, some distortions in their labour frameworks have been detected according to the information provided by employers’ organisations of these countries.

13. Companies that have made the choice of becoming an SE have reported consistently that the procedure for negotiating the agreement on employee involvement is cumbersome.

14. Nevertheless, we believe that the procedure on employee involvement is just one of the factors that companies consider when deciding to become an SE. Other aspects deriving from the SE regulation, such as acquiring a European image or promoting a more efficient management structure, also play an important role and priority should be given to them when improving the SE legal framework.

15. In this context, BUSINESSEUROPE does not recommend reopening the SE directive, even with the only aim of simplifying this procedure.

16. In addition, we do not share the view expressed by DG Employment in the consultation document that EU action would be needed to improve legal certainty and/or to avoid that the SE form would have a negative effect on workers’ rights to be involved under national and/or EU law.

17. According to our member federations, the provisions of the directive have been implemented fully at national level. We received no sign that changes to the directive would be needed to increase legal certainty.

18. Before reopening the directive, we must keep in mind the long and difficult Council negotiations that occurred over a period of thirty years, with fifteen Member States or fewer, before the SE statute could be adopted in 2001. And the fact that different views of member States on how to address the issue of employee involvement in the Statute was at the core of these difficulties.

¹ EUROFOUND report on “Employee involvement in companies under the European Company Statute”, March 2011



19. That being said, we would have a major concern if further research would establish in the future that companies that are established in countries where employee participation does not exist would be forced to include worker representatives in their board due to the existence of such rights in one country where the SE operates. Such a finding would require EU action in order to assess whether the SE directive respects the diversity of national industrial relations systems.

20. At this stage, instead of revising the SE directive, we recommend that the European Commission gives priority to simplifying the SE regulation, in particular to reduce the number of references to national laws and of options given to Member States on particular aspects of the regulation.

21. Finally, BUSINESSEUROPE calls for the quick adoption of the Statute for the European Private Company (SPE), including simple rules on employee involvement in accordance with applicable laws in the country of the registered office.
