Chapter 2
The European Company Statute: a tangled history

Sandra Schwimbersky and Michael Gold

1. Introduction

The European Company Statute (SE), which was eventually adopted by the European Union (EU) in 2001, is one of a series of measures proposed by the Commission in an attempt to harmonise company legislation across the EU Member States.[1] Since 1968, when the first company law harmonisation directive was adopted (on disclosure requirements), the process has covered a wide variety of areas including domestic and cross-border mergers, group accounting procedures, the qualifications of statutory auditors and the rights of minority shareholders, amongst others. By 2001, some twelve such directives had come into force, together providing a firm basis for the integration of the legislation governing European corporate practice.

These legal initiatives have been underpinned by the emergence of the Eurocompany, the product of 'pan-European approaches to industrial relations and employment matters' (Marginson 2000: 21). Managements in multinational companies have responded to the deepening processes of European economic, political and social integration by organising production, sales, marketing, human resources and other functions on a European scale. These processes have been accompanied by common policies on equal opportunities, training and remuneration, as well as by a whole range of performance control systems involving benchmarking and productivity indicators (Marginson and Sisson 2006: chap. 8). The

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development of European works councils has been only the most visible aspect in the evolution of the Eurocompany (Gold 2003).

However, until the SE statute, the Eurocompany — as a term used by researchers, rather than by employers — remained a theoretical construct, a phenomenon created by employer responses to regional integration and by piecemeal Commission measures on company law harmonisation. Indeed, many commentators insist on the enduring influence of national institutions and legal frameworks on forms of corporate governance and industrial relations, and refer to 'varieties of capitalism' (Amable 2003; Whitley 1999). They point out that many features of the domestic business environment — such as forms of owner control, sectoral integration, collaboration between competitors and trust shown towards workers — have remained resilient to processes of convergence resulting from European integration. The question, then, is the extent to which multinational companies manage to transcend these national frameworks to occupy a genuinely European 'space'. The SE statute has now, arguably, created the legal foundation for such a space because it is intended to simplify the range of different regulations otherwise applicable to companies in each Member State, reduce administration and legal costs, and promote economies of scale. Furthermore, SEs should be able to restructure themselves more easily across borders as they can relocate their registered offices without being restricted by national bureaucracies.

Various commentators have noted the exceptionally long period required to incubate the SE (EWCB 2002a; EWCB 2002b; Goulding 2004) — some 31 years from the publication of the first draft in 1970 until its final adoption by the Council in 2001. It can be argued that the SE in 1970 was an idea well ahead of its time and that further, deeper stages of European integration were required first as preconditions to guarantee its acceptance. The emergence, and conceptualisation, of the Eurocompany gives substance to the formulation of a Statute that gives it a potentially clear, legal identity, with functions, rights and responsibilities. There are parallels here with the European Works Councils Directive, which has been described as the 'son of Vredeling' (Cressey 1993: 99). The old `Vredeling' Directive on information and consultation in companies with 'complex structure' was also ahead of its time when proposed in 1983. The development of informal European works councils (EWCs), set up voluntarily by certain multinational companies in the late 1980s and early 1990s on the basis of management need, was the precondition

for the eventual Directive in 1994 that gave them legal foundation. By then, increasing numbers of employers had come to view them not as an intrusion into management prerogative but rather as an instrument to create a genuine European corporate identity.

2. The European Company Statute: origins and evolution

The SE was, as noted above, eventually adopted by the Employment and Social Policy Council of the European Union in 2001. The Regulation and Directive that gave it effect came into force three years later in October 2004 across the European Economic Area (EEA) — the now 27 Member States of the EU (28 with the accession of Croatia in July 2013) along with Iceland, Liechtenstein and Norway. The Regulation, which is directly applicable, came into force on 8 October 2004, though transposition of the Directive into national legislation was uneven at first: only nine countries managed to meet this deadline (Austria, Belgium, Denmark, Finland, Hungary, Iceland, Slovak Republic, Sweden and the UK), though since then all other countries have transposed the Directive.

These two new legal instruments are designed to encourage the creation of 'European Companies', that is, companies that operate across the EEA governed by a single set of management and reporting systems. The Regulation covers the legal structure of the European Company, while the Directive covers employee representation, a highly controversial feature of the SE and the principal focus of this chapter.

The SE can be seen as integral to the continuing economic integration of the European Union against the background of the Single European Market and Economic and Monetary Union. This chapter examines the lengthy development of the SE, which it divides into the following stages:

– Genesis and attempted harmonisation, 1959–82;
– Flexibility, but failure, 1985–93;
– Flexibility, and success, 1995–2001;
– Implementation, review and ancillary measures, 2001 to date

The chapter focuses in particular on the requirements placed in the SE statutes for European Companies to introduce employee board-level representation, and how these have affected its evolution and eventual content.

2.1 Genesis and attempted harmonisation (1959–1982)

The creation of a uniform structure for publicly limited companies across the European Economic Community (EEC) was first explicitly proposed by Pieter Sanders in his inaugural lecture as Professor of Comparative Law at Rotterdam University in 1959, two years after the EEC Treaty had come into effect. After many years' deliberations, a proposal was submitted to the Council as a draft Regulation in June 1970 (Sanders 1973).

The basic, enduring rationale for the SE has been that undertakings 'should be able to plan and carry out the reorganisation of their activities at Community level' in order to be able to improve their competitiveness (Bulletin 1970: 5). The main problem was that the legal framework of European undertakings, in remaining national, no longer reflected the economic framework within which they were operating and so was no longer appropriate for the purposes of the Community. The only solution was to allow the establishment, alongside national companies, of others that were 'wholly subject only to a specific legal system that is directly applicable in all the Member States, thereby freeing this form of company from any legal tie to this or that particular country' (Bulletin 1970: 6). All drafts of the SE statute have therefore allowed for the formation, structure, operation and liquidation of a European Company, including the highly controversial issue of employee participation.

In 1970, the EEC consisted of only the six original Member States (Belgium, France, Federal Republic of Germany, Italy, Luxembourg and the Netherlands). Legal provision governing employee participation across these countries varied greatly, though it all reflected the common principle that employees must be 'enabled to unite in defence of their interests within the undertaking and to share in the making of certain decisions' (Bulletin 1970: 87). The European Company should not only take this principle into account but 'encourage' it, as cooperation between employees and management, and between employees in different countries, would contribute 'to the solution of particular problems which may arise when a company's personnel is recruited from more than one Member State' (Bulletin 1970: 87).

The 1970 Commission proposal for an SE envisaged three types of legal machinery for regulating employee representation in the European Company: the formation of European works councils (EWCs); employee representation on its supervisory board; and the conclusion of collective

agreements. EWCs were based on an extension of existing national legislation governing domestic works councils, familiar across the Six, while collective agreements were also a long-standing fixture of all European industrial relations systems. The innovation — or potential innovation — was the reference to employee representation on supervisory boards.

Germany was the only Member State at that time that required employee representation on supervisory boards, and so provided the model. Belgium and Italy still to this day have no such requirements, while legislation in the Netherlands and Luxembourg dates from 1971 and 1974 respectively. In France, employee board-level representation exists generally only in State-owned and privatised companies, but in 1986 a decree permitted its voluntary introduction into private companies as well (though it remains rare). German legislation, by contrast, dates from 1951 and 1952, and was supplemented in 1976 (Keller and Kirsch 2011). Fearing dilution, Germany convinced the Commission that 'such representation is necessary in the case of the European Company' (Bulletin, 1970: 88). Title V of the SE laid down the requirements: Article 137, for example, stipulated that at least one third of the members of the supervisory board should be employee representatives elected through the national systems of employee representation acting as an electoral college. In due course, both the Economic and Social Committee and the European Parliament commented on the text and proposed a number of amendments. The Commission accordingly submitted its amended draft Regulation on the SE to the Council in May 1975 (Bulletin 1975).[2]

The main alteration in the revised Commission proposal from 1975 was in the inclusion of co-opted members on the supervisory board. However, there was still only one model envisaged: one-third representation for shareholders, employees and members co-opted jointly by shareholders and employees respectively. Lack of flexibility persisted despite the accession in 1973 of three new Member States: Denmark, Ireland and the UK. Denmark subsequently introduced a system of employee board-level representation in 1973, as did Ireland for certain public sector organisations in 1977. The UK also attempted to introduce its own system in the 1970s, but the Conservative government elected in 1979 resolutely

2. The SE should not be confused with the draft Fifth Directive, first proposed in 1972 and heavily amended in 1983. This Directive would have required employee representation at board level in all large publicly limited companies across the European Economic Community (EEC). It remained deadlocked and was eventually withdrawn in 2004.

opposed employee board-level representation (Gold 2005). The legal basis of the SE remained Article 235 (now Article 308) of the EEC Treaty, requiring unanimity on the Council of Ministers. By 1982, discussion on the Council was deadlocked, and progress on the SE was suspended.

2.2 Flexibility, but failure (1985-1993)

In 1985, the Commission published its White Paper, *Completing the Internal Market*, which provided the opportunity to reopen debate about the SE. The White Paper contained around 300 measures — focusing particularly on the elimination of non-tariff barriers to trade among the Member States by the end of 1992 — and was followed by the Single European Act, which took effect in 1987, and applied qualified majority voting on the Council to promote their introduction. The SE featured among these measures. In June 1987, the European Council requested the institutions involved to make 'swift progress' on the measure (Bulletin 1989: 7). The Commission soon published a Memorandum on the SE designed to overcome the negotiating deadlock by offering all parties concerned the chance to comment on various aspects, including its voluntary status, the independence of national legislation and three models of employee representation (European Commission 1988: 17).

These three models were subsequently slightly amended and incorporated into the Commission's new draft of the SE (Bulletin, 1989). A Member State would be allowed to limit the choice of models for European companies having their registered office on its territory, as their equivalence was 'ensured by the Statute' (Bulletin 1989: 9). Either:

- between one-third and one-half of representatives on the supervisory or the administrative board were to be appointed by the employees or co-opted by the board; or
- a 'separate body' was to represent employees in line with statutes laid down in consultation with the representatives of the founding companies; or
- 'other models' could be set up following agreement between management and employee representatives.

The new draft also allowed for the introduction of a 'standard model' either by agreement or in case of failure to agree, which was to conform to 'the most advanced national practices' with respect to information and

consultation. The SE thereby became a 'hybrid', subject to Community legislation on the one hand, but supplemented by national legislation, for example relating to taxation or forms of employee participation, on the other (Blanquet 2002).

In addition, the Commission split the SE rules into a Regulation, covering company law aspects based on Article 100a of the EEC Treaty (Maastricht version, now Article 114 of the Treaty on the Functioning of the European Union, or TFEU), and a Directive, covering the employee rep-resentation aspects based on Article 54 (3) (Maastricht version, now Article 50 (2g) TFEU). Both articles would have allowed for qualified majority voting rather than unanimity on the Council. These new texts were subsequently amended in 1991. The Directive, for example, was amended with respect to the procedures for adopting the model of participation, appointing candidates to the supervisory board and electing the representatives of the employees within the European Company (Bulletin 1991: para. 1.2.47). Largely because of the disagreement of Germany, Ireland and the UK regarding the equivalence of the three models proposed, the Council subsequently suspended discussions again in 1993. Germany feared that the 1989 version of the SE contained weaker provisions on employee representation at board level, which might allow companies based in, or operating in, Germany to avoid stronger national provisions. Ireland and the UK, by contrast, opposed the introduction of such representation through EU legislation on the grounds that the model was inappropriate to their own domestic conditions (Goulding 2004: para. 8-88). Thus the Single European Market came into effect in 1993 without the SE.

2.3 Flexibility and success (1995–2001)

Economic and Monetary Union culminating in the introduction of the euro in 1999 led to further pressure to adopt the SE, in addition to which the success of the EWC Directive in 1994 demonstrated that progress on EU-level employee participation was still possible. Business too continued to lobby for the SE (Blanquet, 2002). In 1995, the Commission published a Communication on worker information and consultation, which made a series of recommendations on the way forward, such as establishing a general framework at EU level for national-level information and consultation (Goulding 2004:8-89).

Against this background, the Commission convened a 'high-level expert group', chaired by Etienne Davignon, a former Vice-President of the Commission, to analyse these issues further. The group published its results in 1997 (Group of Experts 1997). Noting the difficulties in harmonising the diversity of institutional and legal frameworks for employee participation across the Member States, the report 'opted for a different approach', namely one that prioritised 'a negotiated solution tailored to cultural differences and taking account of the diversity of situations' (Group of Experts 1997: para. 94c). The report therefore proposed that negotiations between management and employee representatives should determine the system of participation within each European Company, but that a set of fall-back provisions should apply, particularly in case of failure to agree. This approach — negotiations backed by statutory arrangements — reflects the approach enshrined in the EWC directive in 1994.

The Presidency of the Luxembourg Council produced a revised draft of the Directive in 1997, incorporating the Davignon report's recommendations on employee participation. One key area awaited resolution before the Directive could be adopted unanimously by the Council, as required by its revised Treaty base, Article 308 (Amsterdam version, now Art. 352 TFEU).[3] This was the 'before-and-after' principle, which guarantees the acquired rights of workers to participation in the European Company to ensure that they are never eroded or eliminated as a result of its creation (Blanquet 2002). Following protracted negotiations, the Nice Council in December 2000 eventually agreed an opt-out clause to meet Spain's reservations on this principle. This allowed Member States like Spain and the UK to exempt companies from employee board-level representation when forming a European Company by merger, and when none of them had had such provision beforehand and the negotiating parties agreed. The Employment and Social Policy Council subsequently concluded a political agreement on Council Regulation (EC) No. 2157/2001 and Council Directive 2001/86/EC, which it adopted on 8 October 2001.

But even then the controversy was not over. The European Parliament prepared to challenge the change in the legal base under which the Regulation and Directive had been adopted. Article 308 is the general article

3. In May 1999 the Council legal service recommended anchoring both Directive and Regulation to a different legal basis, Art. 308 (Council of the European Union 1999a). The recommendation was approved and incorporated in the subsequent Council political compromise (Council of the European Union 1999b).

that allows the Council — on a proposal from the Commission, and following consultation with the European Parliament — to take 'appropriate measures' by unanimity to achieve one of the objectives of the EU. The European Parliament called for a change in the legal base to Article 137 (3) which covers 'representation and collective defence of the interests of workers and employers, including co-determination' and would have allowed the European Parliament a greater influence through its co-decision procedure. However, following debate, the European Parliament resolved to abstain from a legal challenge in February 2002, which allowed the SE finally to come into force on 8 October 2004.

2.4 Implementation, review and ancillary measures (2001 to date)[4]

Even though countries had three years in which to transpose the SE rules, as noted earlier, only nine had done so by the deadline. In date order they were: Denmark, Sweden, Hungary, Iceland, Austria, Finland, Slovak Republic, UK and Belgium. The last ones to comply were Spain (October 2006), Ireland (January 2007), Romania (March 2007) and Bulgaria (July 2007). Failure to transpose on time prevented workers from those countries from taking part in the negotiations for planned European companies. Furthermore, the ETUI explains that the delays were not the result of national debates about the ECS, but 'rather by an apparent lack of interest in the issue' (ETUI 2012).

By 15 August 2012, a total 1,379 SEs across 25 of the 30 EEA member states had been registered in the ETUI's European Company (SE) Database, an increase of 266 in the four and a half months since 1 March. Table 1 shows the figures broken down by types of SE.

Table 1 **Breakdown by type of SE (as of 15 August 2012)**

Type of SE	Number of SEs	Percentage of total
Normal	219	16
Empty/Micro	252	18
UFO	908	66
Total	1,379	100

Source: ETUI (2012).

4. This section draws heavily on the ETUI website, http://www.worker-participation.eu/

Two hundred fifty-five SEs are classified as 'normal' (that is, with operations and more than five employees), 252 as 'empty/micro' (with operations but with five or fewer employees) and 908 as 'UFO' (unclassifiable owing to insufficient information).

The key category is 'normal', which are fully operating European Companies with employees, though only 16% of the total has been identified as such. Of course, a proportion of UFOs may also be functioning as normal SEs, but information about them so far remains unavailable. Germany accounts for 103 (47%) of all so far identified normal SEs, with the Czech Republic for 45 (20%) and the Netherlands for 12 (6%). The Czech Republic accounts for 864 of all SEs, but a very high proportion of these (724, or 84%) are UFOs. The principal sectors in which normal SEs have been established include financial services (23%), commercial services (19%) and metalworking (16%).

Apart from the growth in SEs themselves, there are two further developments since 2001 that affect the SE and so deserve comment. The first is the review of the SE initiated by the European Commission in 2010 and the second is the adoption of various ancillary measures that supplement the SE, notably the adoption of the European Co-operative Society (2003), the cross-border mergers Directive (2005) and the recast European works councils directive (2009), as well as progress on the European Private Company (SPE) Statute.

3. Review of the SE

The European Commission has started the review of the European Company Statute as envisaged in Article 69 of the SE Regulation.

In 2009, the management consultancy, Ernst & Young, published a report on the operation and impact of the SE (Ernst & Young 2009). The report, which was carried out on behalf of the European Commission, outlined the relevant legislation on the SE that applied across the countries, drew up an inventory of existing SEs, analysed the rationales for establishing – or not establishing – an SE and evaluated the effectiveness of the SE rules. Its tone was generally hostile towards the SE employee involvement elements, alleging that they acted as an 'incentive against the SE'. The Commission subsequently launched a two-month public consultation on the results of the report, and in July 2010 published a

summary of the results (for documentation, see European Commission 2012). This in turn elicited a robust response by the ETUI on both the consultation procedure and its conclusions (Cremers *et al.* 2010).

In July 2011, the European Commission consulted the European social partners on the basis of a document on the possible review of the SE Directive (European Commission, 2011). The document identified three problematic areas concerning the rules on employee involvement contained in the SE Directive: (a) the complexity of the procedure for employee involvement; (b) the lack of legal certainty concerning certain aspects of the negotiation procedure; and (c) the concern that the use of the SE form could affect the rights to employee involvement granted by national or EU law. The social partners replied in October 2011: BUSINESSEUROPE recommended that the Commission give priority to simplifying the SE Regulation, while the ETUC asked for a continuation of the dialogue on improving the SE rules (both in the Directive and the Regulation). At the time of writing (June 2012), the Commission was still considering its response.

4. Ancillary measures

4.1 European Cooperative Society (2003)

The European Cooperative Society (*Societas Cooperativa Europaea*, SCE) provides another step in the completion of the EU's internal market. It aims to reduce existing cross-border obstacles and to make it easier for companies to operate across European borders, thereby enhancing their competitiveness. In this sense, the SCE complements the SE which has enabled companies to set up as a European public limited company. The SCE fills the gap regarding the transnational activities of cooperatives. As in the case of the SE, the SCE legislation consists of a Regulation 1435/2003 on the Statute for an SCE and the accompanying Directive 2003/72/EC on worker involvement. The Regulation came into force from 18 August 2006, by which date countries also had to transpose the SCE directive into national law.

The Regulation requires the Commission to present a report on its application five years after its entry into force. The Commission launched a study which was finalised in October 2010. In April 2011, the responsible Directorate General Enterprise (the SME section) launched a web-based

consultation on the functioning of the European Cooperative Society, to which the ETUC has contributed with a critical assessment. In November 2011 the European Commission summarised the contributions received in a synthesis document and is still considering its response.

4.2 Cross-border mergers directive (2005)

In October 2005 the Council of Ministers formally adopted the tenth company law directive 2005/56/EC on cross-border mergers of limited liability companies. The aim of this directive, which came into force in December 2007, is to facilitate mergers across European borders. Such mergers have historically proved to be expensive, time-consuming and, in some countries, practically impossible. With respect to the safeguarding of existing participation rights in the case of cross-border mergers, it was decided to apply in most instances the mechanisms of the SE directive and broadly to uphold its principles of participation.

However, there are some differences between the two directives. First, the directive on cross-border mergers contains regulations only on employee board-level representation, unlike the SE directive that covers information and consultation more broadly through, for example, the European works council. Second, the threshold for application of the standard rules, which stands at a minimum 25 per cent of employees for the founding of an SE, was raised in the case of cross-border mergers to 33.33 per cent. These thresholds specify the percentage of employees in the companies concerned who have to possess rights to employee board-level participation before the founding of the SE, or the merger, for the automatic application of the standard rules. Third, companies which after the merger select a single-tier board system (possible only in countries with the relevant company legislation) can reduce the number of employee representatives on the board if the standard rules are applied.

If the employees in one of the companies involved had at least one-third of the seats on the management or supervisory board, however, employee representatives must be allocated at least one-third of the seats on the board of the company resulting from the merger.

4.3 Recast European Works Councils Directive (2009)

The recast European Works Councils Directive (2009/38/EC) was designed to remedy some of the deficiencies of the 1994 Directive, particularly by defining information and consultation in greater detail, improving the links between national and European systems of information and consultation, enhancing the involvement of European Trade Union Federations and ensuring adequate training of EWC members (Picard 2010). As mentioned before, the SE Directive ¬had been greatly inspired by the EWC Directive from 1994. Now, in turn, it served in some aspects as an important reference point for the recast EWC Directive which introduced further improvements not yet contained in the SE Directive (see also chapter by Jagodzinski in this volume).

4.4 European Private Company Statute

Since the adoption of the SE legislation in 2001, the idea of creating a European Company form targeted at small and medium-sized enterprises (SMEs) has also been on the political agenda. In 2002, a High Level Group of Company Law Experts organised by the European Commission proposed the creation of the European Private Company (*Societas Privata Europaea*, SPE), as a form complementary to the European Company. This proposal was adopted by the Commission in its 2003 Communication on Modernising Company Law and Enhancing Corporate Governance in the European Union. In 2008 this was followed up by a proposal for a Council Regulation on the Statute for an SPE.

However, despite the attempts of several Presidencies of the Council, no political consensus has yet been reached on legislative measures, as there are deep controversies surrounding four key issues: the required cross-border component; the amount of the minimum capital requirement; the possibility of having the registered office and the headquarters in different Member States; and the rules governing employee participation, particularly at board-level. Indeed, amongst the strongest critics of the SPE proposal have been the ETUC and its member trade unions, which fear that it could be used by companies to avoid national rules on employee participation.

5. Conclusion

From the very outset, when the idea was first proposed in 1959, the principles underlying the SE have remained simple and constant: that the SE, with uniform legal status across all Member States, should supplement existing systems of national company law and not replace them; and that its adoption as a company form should be entirely voluntary – 'those interested can take it or leave it' (Sanders, 1973: 88). Yet the implementation of this simple idea took decades. Differences in industrial relations systems amongst the original six Member States of the EEC were already deep enough, but by 2001 – with 15 Member States – rising to 28 by July 2013 plus a further three from the EEA, the challenges facing implementation had become almost insurmountable. Whilst a major tribute to the EU institutions and Member States that eventually prevailed in ensuring its adoption in 2001 – during, it must be said, a generally optimistic and forward-looking phase of EU development – the adoption of the SE was achieved at the expense of its immense legal complexity and labyrinthine rules regarding one of its main pillars, employee participation.

This complexity largely explains the controversies that still surround the SE, for example, whether it can be seen as a means of positive or negative integration. Positive integration refers to the 'reconstruction of a system of economic regulation at the level of the larger economic unit', and hence implicitly to harmonisation and convergence. Negative integration, by contrast, refers less ambitiously to the 'removal of... barriers to trade' (Scharpf 1999: 45), and hence implicitly to reciprocal recognition and the continuation of national differences and divergences. In other words, the former view stresses convergence, while the latter stresses difference, possibly resulting in divergence.

With respect to transposition — whether by law or, as in Belgium and Italy, for example, by collective agreement — the SE might be viewed as the outcome of various accumulated compromises and as nothing more than a uniform legal framework for companies conducting business across borders in Europe. It is hard to believe that the agreement on the SE was celebrated for the degree of harmonisation that it represents, when the great range of choices and supplementary national legislation applicable to it are taken into account. Some authors argue that the SE cannot be seen as a means of harmonising company law in the Member States (Lutter 2002; Schulz and Geismar 2001). However, nor can it be seen as means of reciprocal recognition, but rather as a means of increas-

ing regulatory competition (Lutter 2002). This could prove detrimental to employee rights or minority shareholder rights, though some may argue that such regulatory competition should not be rejected outright as it may help to minimise state and market failure (Grundmann 2001).

Overall, this chapter concludes that the main result of the SE is to increase regulatory competition. Due to the simplified procedures for relocating headquarters and create a European wide holding company, it is reasonable to assume that the mobility of an SE is considerably higher than the mobility of a national joint-stock company. Therefore the management of an SE is in the position to make use not only of its 'voice-power' but also of its 'exit-power', and thereby to exert considerable pressure on those Member States that do not satisfactorily meet the needs and wishes of the private sector.

However, current empirical evidence does not underpin the exit assumption. It is striking that the majority of 'normal' SEs have been established in countries, such as Austria and Germany, where strict corporate governance rules and employee involvement on all levels of companies are in place. In addition, shareholder-value attitude has taken increasingly hold in public companies in Europe and thus importance of tax optimisation across Europe has increased significantly too, which the SE can facilitate. Empirical evidence to date seems to give no clear answer whether the SE has initiated the race to the bottom or the race to the top. Nevertheless it definitely has increased the possible choices for market participants with regards to corporate governance, tax optimisation and employee involvement across Europe and thus improved their ability to compete.

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