

Chapter 9

The Europeanisation of employee involvement in SEs: lessons from ten case studies

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1. Introduction

The 2001 SE Directive conditions the setting up of a European Company (SE) to the negotiation of an agreement on employee involvement with a ‘special negotiating body’ (SNB). Employee involvement is defined by the Directive as ‘any mechanism, including information, consultation and participation, through which employees’ representatives may exercise an influence on decisions to be taken within the company’. The outcome of this negotiation, which must take place within a period of six months (renewable once), is completely free. However, in case of failure, the standard rules of the Directive apply. These include the setting up of a representative body (generally called the SE Works Council) with reinforced information and consultation rights than a European Works Council (EWC), as defined in the standard rules of the 1994 EWC Directive. An SNB must be very careful to define precise rules for such an SE Works Council in the agreement, because once an SE is established, it is no longer subject to the requirements of the EWC directive. Thereafter demands for setting up an EWC are no longer possible. Concerning board-level representation, the SE Directive safeguards existing participation rights. Here derogation is possible only by a qualified majority vote of the SNB. In the case of setting up an SE by conversion of a pre-existing company, no derogation is allowed at all. The SNB negotiators can, however, not completely rely on the safeguarding rules on board-level representation in the Directive. They must also define the detailed rights of the employee representatives, because once the SE is established, national board-level participation rights will no longer apply at the top level of the company; they continue to apply to its subsidiaries, however. To sum up, the SE Directive pursues two main objectives for employee involvement and in particular for board-level representation: the safeguarding of existing national rights and the creation of conditions for

Table 1 Company profiles

	Allianz SE	BASF SE	Elcoteq SE	Equens SE	Presenius SE	GfK SE	Hager SE	MAN SE	Scor SE	Strabag SE
Country of head-quarters	DE	DE	FI/LU	NL	DE	DE	DE	DE	FR	AT
Sector	Finance and insurance	Manufacturing	Manufacturing	Finance and insurance	Manufacturing, health, social services	Information and communication	Professional, scientific technical	Manufacturing	Finance and insurance	Construction
Workforce	153,203	104,800	12,000	1,300	130,510	10,058	10,500	48,000	1,500	75,548
SE creation date	2006	2008	2005	2008	2007	2009	2007	2009	2007	2006
Method of creation	merger	conversion	conversion	merger	conversion	conversion	conversion	conversion	conversion/merger	conversion
Corporate governance	Two-tier	Two-tier	One-tier	Two-tier	Two-tier	Two-tier	Two-tier	Two-tier	One-tier	Two-tier

Notes: AT = Austria, DE = Germany, FI = Finland, FR = France, IT = Italy, LU = Luxembourg, NL = Netherlands.
Source: Rehfeldt et al. (2011)

the Europeanisation of these rights. By Europeanisation we mean that these rights will no longer be reserved to employee representatives of the home country, but that representation will be opened up to representatives of the European subsidiaries of the company. An empirical investigation of 10 SEs, undertaken in 2010 (see Annex), tried to verify to what extent these two objectives have been realised and whether the SNB negotiators have managed to make use of the options provided for in the Directive to safeguard and to Europeanise employee participation rights. We will here summarise the findings of this study.

2. The SNB and the negotiation process

The establishment of an SNB with employee representatives from all the European subsidiaries of the future SE has to take place according to very strict rules fixed in the SE Directive and the different national transposition laws. The national procedures for designating the SNB members differ considerably from country to country, depending on the legal channels of employee representation. If there are no union or elected representatives in a subsidiary, an election must be organised locally. The responsibility for setting up the SNB lies with the company. As a precondition of this, the central management has to compile documentation on all the subsidiaries, the number of employees and the existence of local employee representation. Companies have to make sure that no employee could challenge the SE because they had not been informed. In practice, there have been few court actions. In our sample, the Austrian company Strabag was one of these cases. Strabag SE was registered in October 2004 as the first SE ever, even though the standard requirements for SE registration were not met. An agreement was negotiated with the existing EWC, but this procedure was not in line with the SE legislation, which does not allow an EWC to act as a substitute for an SNB. Therefore trade unions from Austria, Germany and Belgium notified the court in Austria of the unlawful procedure. Finally, Strabag management and the trade unions agreed to establish an SNB and to renegotiate an agreement.

The SE Directive defines a term of six months, which may be extended to a total of one year, for the negotiation of an agreement on employee involvement. This term seems short, especially compared with the

three-year term allowed for negotiating an EWC agreement. However, this short term has not in itself been a major problem in any of the ten cases we have analysed. In nine of these cases negotiations were finished before the end of the six-month term. In the case of SCOR, the negotiation period was extended because management did not want to place negotiations under time pressure and an agreement was signed after 10 months.

Generally, the first draft of the agreement was prepared by the management. The SNB either negotiated on this basis or presented an alternative draft. Only in the Strabag case was the initial text for the second negotiation drawn up by the SNB after a European trade union seminar for the SNB members, which was co-financed by the European Commission.

The negotiations with management were generally led by a smaller negotiation team mandated by the SNB, which then reported back the provisional results of this negotiation. The employee representatives from the home country were usually well prepared for negotiating an agreement, particularly when there was already employee representation at board level. This constellation provided the SNB members who were also members of the supervisory board with information and the possibility of informal contacts with management in advance of the SNB negotiations. For most of the employee representatives in the SNB, however, the task of negotiating an agreement on employee involvement in an SE was a new experience. A problem for the SNB was often the lack of mutual trust between people who had never met before and now had to act as a coherent body with effective negotiating skills. Another serious problem slowing the internal coordination process was the lack of appropriate knowledge of the different industrial relations systems in the various countries involved. These different traditions often got in the way of developing a coherent negotiating position.

External union advisors often played a crucial role in negotiating employee involvement. Experts cannot, however, compensate for the structural shortcomings of the SNBs described here, because they seldom have detailed knowledge of all relevant industrial relation systems in Europe. Experts often tend to concentrate on legal matters. This marginalises many representatives in the SNB, because the relevant laws – namely, the national transposition laws of the SE Directive – are usually only available in the language of the home country. In such cases, negotiations tend to become a purely legalistic discussion between employ-

ee representatives and management from headquarters. If the expert comes from a European trade union federation, this helps open up the European dimension of the issue and facilitates the search for European solutions. In most cases, the SNB chose union officials as external experts, either from a European trade union federation or from a national union organisation, sometimes with a European mandate.

In none of the cases did either side allow the negotiations to fail. Theoretically, in such a case, the standard rules for employee involvement would apply automatically, but in the end it would have been up to the shareholders to decide whether to accept them or not. If they did not, the SE would not be established. This situation is very different from that of an EWC negotiation, where the negotiators on the employee side can be certain that they will get at least the standard rules after three years or if the negotiations fail.

The formal procedure introduced in the SE Directive gives incentives for both sides to make mutual concessions during negotiations. The outcome tends to be a compromise, depending on specific context, especially the employer-employee relationship in each company. The individual rules in the SE agreements must always be placed in this context. Without knowledge of this context the agreement is difficult to assess.

In the negotiations, the employers' side, and especially the law firms which worked as advisors for several companies in SE negotiations, often confronted the other side with existing SE agreements which they tried to use as a reference. This did not make the negotiations easier, because employee representatives viewed their work as having a pioneering character and possibly serving as a reference for other negotiations.

In all cases the employee representatives generally expected to achieve, with the new possibilities of employee involvement, a kind of EWC 'Plus', with better conditions than the pre-existing EWC, together with a possibility to control management via the supervisory board or the board of directors. Furthermore, they were keen to implement at least the same standards of information and consultation at the transnational level as are fixed for the national level by the European Directive on information and consultation (2002). This refers in particular to employees being fully informed in a timely fashion of relevant business decisions, and consulted with the aim of reaching an understanding with the employer on the decision and its consequences.

In the large SEs of German origin, parity in the supervisory board is guaranteed by the SE Directive and was not up for discussion. In some companies, however, management was looking to reduce the size of the supervisory board. The employee representatives accepted this only in exchange for concessions in other fields, specifically in relation to the SE Works Council.

Finally, in most cases both management and employee representatives were pleased with the final agreement. For management, fundamentally the signed agreement was an acceptable compromise as it was a necessary precondition for the creation of the SE, and also because it was seen as a contribution to the creation of a European company identity.

For the trade unions involved, the agreements were generally assessed in comparison with four kinds of benchmarks:

- observance of the guidelines of a European trade union federation;
- the possibilities offered by the national transposition law, particularly the fall-back positions (standard rules);
- comparison with the agreement and practice of the pre-existing EWC;
- comparison with other SE agreements.

The employee representatives were generally satisfied with the agreement, because the worker participation rights in the supervisory board had been secured, and in some cases even improved, and because important rights had been obtained for the SE Works Council. For the employee representative side, the agreement was also often the result of a compromise between the representatives of different countries and seen as an investment in a common European future.

3. Employee involvement through the SE Works Council

We will now analyse our ten SE agreements in detail. A first important finding is that all 10 SEs in our sample have established an SE Works Council (in the case of SCOR a common SE Works Council for the three SEs). In six of our ten cases (Allianz, BASF, Fresenius, Hager, MAN, Strabag) the SE Works Council replaces a previously existing EWC. For these SEs the comparison between the EWC and the SE Works Council is systematically in favour of the SE Works Council, whose rights and ma-

terial resources were expanded. In some cases there is also a new role for the SE Works Council which goes in the direction of acquisition of some negotiating power. This right is new and still controversial. It remains to be seen what the SE Works Council will do with it in practice.

There were, however, limits to the number of concessions that management was prepared to offer. For the management of the German SEs a transfer of the rights of a German works council to the SE Works Council was out of the question. This applies particularly to the worker participation rules that make it impossible for certain decisions to be taken against the vote of the works council.

3.1 The Europeanisation of employee representation

The establishment of an SE Works Council in and of itself constitutes enormous progress for the four cases (Elcoteq, Equens, GfK, SCOR) where there was previously no EWC and where no other form of transnational cooperation of employees existed before the creation of an SE Works Council. This was because either the company was too small and did not reach the threshold of the EWC Directive (SCOR) or no requests had been made previously by the employee representatives. For these four companies, a Europeanisation of employee representation was thus introduced for the first time.

Table 2 provides an overview of the size and composition of all the SE Works Councils in our sample. As already mentioned, the achievements in the SE agreements must be assessed against the standard rule of the directive. Concerning the size and composition of the SE Works Council, those standard rules have no thresholds, except if the national workforce exceeds 10 per cent of the total workforce. In this case, countries are entitled to one supplementary seat for each 10 per cent or a fraction thereof. Only one SE in our sample (Fresenius) has adopted these standard rules. Most often there is no threshold for representation (Elcoteq, Fresenius, Equens, Hager) or a very low one (5 employees with GfK). Some companies have adopted higher thresholds, 100 in the cases of Allianz and Strabag, 500 in the case of BASF (but 150 if it is a production site) and even 2,500 in the case of MAN. In BASF and MAN, these high thresholds are compensated by provisions for common representatives of smaller subsidiaries.

Table 2 SE Works Councils

	Allianz SE	BASF SE	Elcoteq SE	Equens SE	Presentis SE	GfK SE	Hager SE	MAN SE	Scor SE	Strabag SE
Size of the SE Works Council	37	23	14	5	29	23	20	25	19	18
Number of countries	18	11*	6	2	23**	20	20	9*	9	14
Number of annual meetings	2	3	2	3	1	2	2	2	4	2
Size of select committee	5	3	3	2	7	7	5	9***	2	6
Select committee structure by countries	DE, UK, IT, SK, FR	DE, BE	HU, FI, ES	NL, DE	DE, SE, NL, ES, AT, UK, PL	DE, UK, FR, IT, NL, PL	DE, FR, BE	DE, AT, PL, DK	FR	AT, DE, HU, CZ
Previous EWC	yes (1996)	yes (1995)	no	no	yes (1996)	no	yes (1996)	yes (1996)	no	yes (1996)

Notes:

* Plus one additional guest from Switzerland.

** In practice only 15 countries.

*** Plus additional guests from Switzerland and Turkey and 1 representative for sales/service organisations in 9 other countries.

AT = Austria, BE = Belgium, CZ = Czech Republic, DE = Germany, DK = Denmark, ES = Spain, FI = Finland, FR = France, HU = Hungary, IT = Italy, LU = Luxembourg, NL = Netherlands, PL = Poland, SE = Sweden, SK = Slovakia, UK = United Kingdom.

Source: Rehfeldt et al. (2011)

Some SEs have defined a maximum size of the SE Works Council as a whole, for example, 30 for BASF and 31 for MAN. Most SE Works Councils have between 18 and 29 members; the Allianz SE Works Council has 37, Elcoteq SE only 14 and Equens SE 5, clearly an exceptional case because it represents only two countries.

Most of the SE agreements give the right to supplementary seats to countries with larger workforces. MAN, Strabag and Fresenius use the 10 per cent thresholds of the standard rules. Other SEs use different rules for supplementary seats, either setting the same figure as for initial representation, as at MAN (where the threshold of 2,500 employees corresponds roughly to 5 per cent of the workforce), or a higher threshold, as Allianz, BASF or SCOR. Setting a higher threshold has the effect of limiting the number of seats for the countries with the biggest workforce (generally the home country). This limitation of seats is, however, often compensated by the establishment of voting rights proportional to the number of represented employees and the establishment of a quorum rule for the validity of decisions (BASF, Fresenius, GfK, MAN, and SCOR). A quorum rule means that at least half of the members representing half of the voting rights have to be present during the vote (BASF, Fresenius, and MAN). In the cases of BASF, MAN and SCOR these voting rules secure a comfortable majority position for the representatives of the home country.

The standard rules of the SE Directive stipulate that ‘where its size so warrants, the representative body shall elect a select committee among its members, comprising at most three members’. All the SE Works Councils in our sample have elected such a select committee, generally with at least three members, the chair and two deputy chairs – with the exception of Equens. Those opting for a small select committee generally give preference to the consultation of the whole SE Works Council, which in exchange is entitled to more frequent meetings (for example, SCOR and BASF). Those opting for a big select committee have often delegated certain consultation rights to the select committee, in particular in the case of ‘exceptional circumstances’. All the select committees, except SCOR, are also Europeanised.

3.2 Expanded information and consultation rights

Nine SEs in our sample, including the six of German origin, have adopted the ‘German model’ with an SE Works Council composed exclusively

of employees and a chair elected by the works council. Only SCOR has adopted the 'French model', with an SE Works Council chaired by the employer. There is, however, no difference in practice. SE Works Councils of the German type also meet the employer in bilateral meetings and the other SE Works Councils have the right to organise separate preparatory and follow-up meetings without the presence of the employer.

The standard rules foresee one annual meeting of the SE Works Council. All the SE agreements in our sample, except Fresenius, go beyond this and allow at least two ordinary meetings (see Table 2). Equens has three and SCOR four meetings a year. Where the select committee has German members, the frequency of select committee meetings is generally fixed in the SE agreement. In the Fresenius agreement it is set at three times a year. At GfK the select committee will meet four times a year in the first two years and at least three times a year thereafter. At MAN, the select committee meets six times a year, but 'extraordinary meetings are always possible'.

The standard rules of the SE Directive contain provisions for working facilities and training of SE members. They are applied in all of the SE agreements in our sample. The translation of documents is sometimes limited to translation into English (BASF, SCOR). Minutes of meetings are, however, nearly always translated into all necessary languages. At MAN and BASF, the select committee has the right to be assisted by a full-time advisor and/or a secretary.

Many EU Member States have in their transposition legislation limited the number of experts paid for by the company to one. In the SE agreements we seldom find such strict limitations. Many SEs include the right to select experts without limitation of numbers. In some cases (Allianz, BASF, Fresenius, GfK, MAN) the possibility for union officials to attend the meetings is explicitly mentioned. In most SEs, the employee board-level representatives participate as guests in the SE Works Council meetings, unless they are already SE Works Council members. In the cases of Allianz, MAN and BASF, they are in practice full-time external union officers.

Under the standard rules, the competence and powers of the SE Works Council are governed by the following rules: It has the right to be informed and consulted on the basis of regular reports on the progress of the business of the SE and its prospects. The competent organ of the

SE shall provide the representative body with the agenda for meetings of the administrative board, or the management and supervisory board, and with copies of all documents submitted to the general meeting of its shareholders. The annual meeting shall relate in particular to the structure of the SE, its economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

Most SE agreements repeat the list of information rights contained in the standard rules. Some add other items. In many agreements, they are limited to 'cross-border' matters, generally defined as matters concerning more than one country. At BASF, in a special document annexed to the SE agreement, cross-border matters are defined as matters that concern more than 50 employees in at least two countries and at least 15 employees in each country, as well as re-location of employment from one European country to another.

The standard rules stipulate that 'where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies', the SE Works Council has the right to be informed. The SE Works Council or the select committee has the right to meet at its request the competent organ of the SE. Where the latter decides not to act in accordance with the opinion expressed, the SE Works Council has the right to a further meeting with the competent organ of the SE 'with a view to seeking agreement'. In the case of a meeting organised with the select committee, those members of the SE Works Council who represent employees who are directly concerned by the measures in question also have the right to participate. All SE agreements contain such supplementary consultation rights, generally defined as in the standard rules of the SE Directive. Some agreements give supplementary or more precise conditions.

As for the timely character of this information, the agreements often use a formula inspired by the 2009 revision of the EWC Directive: 'in due time', so that management is able to take into account the opinion of the SE Works Council before taking its final decision. In two cases (BASF

and SCOR) the SE Works Council has the right to be informed before the national representative bodies.

Some agreements (MAN, Allianz and Fresenius) give the SE Works Council rights which come close to negotiation rights. At BASF, the aim of the consultation is 'reaching an agreement with the company after comprehensive and final deliberations'. Common opinions resulting from this consultation procedure must be written into the minutes and signed by both sides. The Allianz SE Works Council has the right to take initiatives, together with management, on cross-border matters, with the goal of defining guidelines in the areas of: equal opportunities, work and health protection, data protection, training and education policies. The Fresenius SE Works Council has the right to launch initiatives to define guidelines on certain matters, such as corporate social responsibility or health and safety at work.

3.3 The SE Works Council as 'employee advocate'

In some cases the SE Works Council can play the role of an 'employee advocate'. This means that the SE Works Council can act on behalf of those who have no or only weak employee representation. 'No or weak employee representation' can mean that there is no legal or recognised representation body in a subsidiary, as is often the case in subsidiaries in the United Kingdom or in Eastern Europe. It can also mean that representation bodies exist locally, but there is no national coordination between them, either because of the lack of legal provisions or a lack of interest on the part of the local employee representatives. Finally, it can also mean a relative lack of power of the local employee representation compared to that of the employee representation in the SE's home country. All these forms of imbalance can be observed in our sample of SEs. Some SE Works Council members are able to 'borrow' from their established relationships with management in the home country in order to assist employees or employee representatives in a situation of conflict with local management. Such advocate situations are most frequent in SEs of German origin.

A more institutionalised form of this assistance is found in the BASF case, where the SE agreement has perpetuated the practice of 'country meetings' which have been added to the EWC meetings since 2003. These are national meetings between the national members of the SE

Works Council and employee representatives of those companies in a given country which are not directly represented in the SE Works Council. They are organised for the purposes of preparation and follow-up of the SE Works Council meetings. If a meeting is organised as a bilateral meeting with the national management, the head of the HR department of BASF SE also participates. Although the SE agreement stipulates that ‘such meetings shall not constitute consultation and decision-making bodies in national matters’, they are particularly useful in countries where there is no legal or collective institution for coordination between employee representatives of different establishments of the same company or group. Although the words ‘employee advocate’ were removed from the final agreement at GfK, its SE Works Council can also get involved in local issues if there is no local employee representation.

3.4 Practical experiences of SE Works Councils: achievements and shortcomings

Analysis of the relationship between the European and the national employee representation bodies is generally considered a major research deficit. In our study this was one of the questions that proved difficult to analyse. Of course most employee representatives stressed the added value of the existence of an SE Works Council for access to strategic information and to central management, in particular for those employee representatives outside the SE home country. But we know little about the use of this added value in the everyday practice of national and local employee representation. All SE Works Councils analysed have existed for a comparatively short time and therefore have only limited experience. The length of time they have existed ranges from five years (Elcoteq) to only one year (GfK and MAN).

As a general rule, one might say that, when the negotiations on the SE Works Council were difficult and characterised by conflicts, its operation also tended to be difficult and conflictual. Where negotiations were more consensual, the SE Works Council’s operation also was inclined to be so. In several cases this may result from the strong influence of German codetermination culture, as in the cases of Allianz, BASF, Fresenius and MAN. This codetermination culture had also influenced the climate in the EWCs previously set up in all four companies – although these EWCs were far from perfect and their experiences might be assessed in very different ways. We did not find any major difficulties in the implementation

of the SE agreement in these four companies. Of course, most of them have gone through restructuring which, as ‘exceptional circumstances’, have led to extraordinary SE Works Council meetings. But generally these restructurings were undertaken without major compulsory redundancies. The management in the four companies maintained a socially responsible approach to restructuring, despite the general economic downturn.

The experiences referred to so far contrast with those of two other SEs in our sample, Strabag and Elcoteq. Strabag was the first SE to be set up, and its agreement was contested in the courts. Finally, the company agreed to renegotiate and the result was positively assessed by the employee representatives. The experience of Elcoteq is much more negative. From the beginning there were tensions, not only between central management and the home country employee representatives, but also between the latter and the employee representatives from the other countries. In its first phase, the SE Works Council was chaired by a unionist from Finland and there was a common cultural background and a good relationship with the Finnish management. Although there certainly was a home country effect, there was no clear home country dominance. After a series of restructurings and plant closures, employment shifted to Eastern Europe and outside of Europe. In Europe, employment is now concentrated in Hungary. As a consequence, the SE Works Council is now chaired by a unionist from Hungary. At the same time, the headquarters has moved from Finland to Luxembourg. These instabilities have also destabilised the relationship between management and the SE Works Council. The distance, both in the literal and the symbolic sense, between employee representation and management has grown, although the HR manager is now Hungarian. It has proved impossible to establish stable relationships between the SE Works Council members in Hungary and those in Finland and Estonia. So this case can really be considered an example of bad practice, although its deficiencies cannot be attributed to the SE structure.

4. Employee participation through board-level representation

It is a basic principle of the SE Directive that good corporate governance should include the participation of employee representatives at board level. This principle has guided the Directive on employee involvement

in the SE and has to be implemented in all EU countries, regardless of whether a tradition or culture of board-level representation exists or not. Regardless of their national backgrounds, employee participation at board level was an important aspect of the negotiations on employee involvement in all of our ten cases.

4.1 Preservation of board-level representation

Pre-existing board-level participation was secured in seven SEs: five from Germany, one from Austria and one from France. No weakening of German codetermination rights occurred in the negotiations. In three German companies, however, management imposed a reduction of the number of seats of the supervisory board, and another German company managed to 'freeze' its one-third employee participation near the threshold of 2,000 employees beyond which parity codetermination would have been compulsory according to German law. No company switched from two-tier to one-tier corporate governance.

Allianz, BASF and MAN are cases of companies headquartered in Germany which have reduced the size of their supervisory boards: from 20 to 12 at Allianz and BASF, and from 20 to 16 at MAN. All companies were characterised by 'parity codetermination' which means that they had an equal number of employee representatives on the supervisory board: partly employee representatives from the company elected by the works council and partly a small number of external full-time officers nominated by the trade unions. The fourth German company with parity representation, Fresenius, has kept the size of its supervisory council unchanged as an SE. One must add, however, that in case of further growth by acquisition, the German Fresenius company would have been forced by German company law to enlarge its board from 12 to 20. By opting for an SE the company was able to maintain the number of supervisory board members at 12 into the future. In all four companies parity representation was secured and Europeanised, however.

In the three cases where employees are still not represented at the board level (Elcoteq, Equens, and Hager) employee representatives in the SE Works Council have received some compensation in the form of enlarged information rights.

4.2 Europeanisation of board-level representation

All seven SEs that have employee representation at the supervisory or management board level have also agreed to the participation of employees from other European countries, as illustrated by Table 3.

In the case of MAN, the agreement stipulates that after the first two years, the six in-house employee board representatives will formally be elected by the SE Works Council in proportion to the respective workforces in the different countries. This vote will be by simple majority of the voting rights of the SE Works Council members voting, who must, however, represent the absolute majority of the whole workforce in all countries. The candidates for this election will be nominated by the employee representation body at the highest level in each country, in Germany by the members of the group works council, together with the chairman of the committee of managerial staff, everyone with voting rights in proportion to the employees they represent. The two full-time union representatives will be nominated by the national union mandated by the European Metalworkers' Federation (EMF), after coordination with the other unions present in the MAN subsidiaries. The EMF custom is to mandate the union where the headquarters of the company or the majority of the workforce is located, presently Germany and thus IG Metall. All six in-house board representatives are also members of the SE Works Council. Five of them are also members of the select committee. The two union officials on board are 'invited guests' in the meetings of the SE Works Council and the select committee.

The fifth German SE, GfK, had only one-third employee representation on the board rather than parity. GfK in Germany was, at the time of the conversion into an SE, very close to the threshold of 2,000 employees. According to German legislation on codetermination, in case of further growth of employment GfK would have had to introduce employment representation on a parity basis, including external union representatives. By moving to the SE form it had a chance to preserve its one-third seat distribution. During the negotiations it finally agreed to enlarge the size of its supervisory board, which now includes four instead of three employee representatives. The company's lawyers were concerned that it might not be legal because the total number of board members was not divisible by three, but the legality of the agreement was finally confirmed by the Regional Court. Under the terms of the agreement, the employee representatives on the supervisory board are elected by the SE Works

Table 3 SE board-level representation

	Allianz SE	BASF SE	Elcoteq SE	Equens SE	Fresenius SE	GfK SE	Hager SE	MAN SE	Scor SE	Strabag SE
Corporate governance system	Two-tier	Two-tier	One-tier	Two-tier	Two-tier	Two-tier	Two-tier	Two-tier	One-tier	Two-tier
Employee participation	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes
Size of the board	12	12	n.a.	8	12	10	8	16	11+1*	10
Number of employee representatives	6	6	/	/	6	4	/	8	1+1*	5
of which: from other countries than the home country	2 FR, UK	1 BE	/	/	2 AT, IT	2 UK, NL	/	2 AT, PL	1* IT	4 AT, HU, CZ

Notes:

* One employee representative without voting rights.

AT = Austria, BE = Belgium, CZ = Czech Republic, FR = France, HU = Hungary, IT = Italy, NL = Netherlands, PL = Poland, UK = United Kingdom.

Source: Rehfeldt et al. (2011)

Council from among the members of the select committee. The current situation is that there are two members from Germany and one each from the United Kingdom and the Netherlands.

At the French insurance company SCOR – the only case of employee participation in a management board in our sample – the board of directors consists of 11 directors plus one non-voting director. They are appointed by the assembly of shareholders. As before, the employee director on the board is elected by SCOR group employees worldwide (and then formally also appointed by the shareholder assembly). One further employee representative, not called a director, has been added, without voting rights. He is appointed by the SE Works Council. Currently, he comes from an Italian subsidiary. The French works council continues to be represented by two representatives, also not called directors and without voting rights.

Europeanisation of employee representation at board level was a rather contentious issue in Strabag. As the Austrian SNB members were convinced that Strabag management would not agree to have a German trade union member on the board, they developed an alternative proposal which went unchanged into the initial SE agreement. According to this, the Austrian members of the SE Works Council would continue to nominate supervisory board members. However, after contestation of the agreement before the courts, a revised agreement was concluded in 2009 and introduced a significant Europeanisation of board-level employee representation. Now the five employee representatives come from four different countries (Germany, Austria, Hungary and the Czech Republic) and there is only one Austrian representative.

The quantitative dimension of board-level representation – that is, how many countries are represented by how many seats – is only one dimension of the Europeanisation of board-level representation. Another and even more important dimension is the quality of this Europeanisation: in other words, the degree to which representatives develop an understanding that they exercise a ‘European mandate’ rather than representing the interests of employees from a specific country or even more narrowly from a single establishment.

The European Trade Union Confederation (ETUC 2003) and the European trade union federations (cf. EMF 2003; Triangle 2005) actively foster this European mandate for the representation of the general European

interests of the workforce of transnational companies, and in particular in SEs. Our case studies show that active involvement of European trade union federations was crucial for developing this broader perspective of representation of European interests. However, the EU level of union support is still rather poorly developed. A fresh approach has been the establishment by the ETUC of a European Worker Participation Competence Centre (EWPCC), located at the European Trade Union Institute (ETUI) in Brussels. This centre is a fund which provides support for employee representatives at board level in European Companies (such as special training sessions, seminars, advice, topical research and publications). It is financed out of the attendance fees of employee board representatives of SEs, in the same way as employee board representatives in German companies transfer the bulk of their fees to the Hans-Böckler Foundation, which was set up by the German unions for this purpose.

5. Conclusion

Our case studies have shown that the substantive and procedural rules of the SE Directive have indeed made it possible to realise two central objectives: the safeguarding of participation rights and their Europeanisation. The SNB negotiators, with significant support from the European trade union organisations, have taken advantage of this opportunity to create a new type of European-level employee representation. The arrangements of employee involvement in the SE have thus opened up a new dimension of Europeanisation of industrial relations. The arrangements support the development of European identities in transnational companies and of European mandates for employee representation. Some have also had a positive effect on workplaces where the notion of social dialogue and cooperation so far has been either weak or non-existent.

The overall impact is still limited, however. If the SE Directive has managed to guarantee existing participation rights and to Europeanise them, we have found no case where such rights were introduced in SEs where they did not exist before at the national level. The second limitation of impact stems from the fact that only very few SEs with employee involvement have been created up to now, especially compared to the quantitative development of EWCs. This is because the initiative has to come from the companies. We still know little about the motivations of those companies who decided to set up an SE – and still less about the motiva-

tions of companies who have not made such a decision. The SE structure is used by some companies to create leaner company structures in an international environment. Employee involvement is perceived by those companies who have negotiated an agreement as an integral part of corporate governance and as a chance for successful and efficient transnational decision-making and human resource development.

The Ernst & Young (2009) study on the impact of the SE statute, commissioned by the European Commission, states that 'the employee involvement process is considered to be a negative driver, especially in the Member States in which the national legislation does not provide for a system of employee participation'. This argument is difficult to understand, however, as the before-and-after principle of the standard rules of the SE Directive cannot oblige companies without previous employee participation to introduce new participation rights. If decision-makers in companies have expressed such opinions as the one reported by the Ernst & Young study, they seem to be based on insufficient knowledge of the legal provisions.

The Ernst & Young study also sees trade union representatives in the SNB as a negative driver for the development of SEs. The empirical findings of our study contradict this assertion. Trade union representatives as advisors of SNBs have helped to find an acceptable compromise, not only between the SNB and the management, but also between the SNB members from different countries. This positive role is often acknowledged by management representatives in the negotiations.

Finally, the Ernst & Young study suggests that SNB negotiations are 'complex, costly and time-consuming'. This assertion is again in contradiction with the findings of our study. In practice, the maximum six-month period is rarely reached or exceeded. One can add that all the SNB negotiations in our study have been concluded by an agreement and nowhere has the SNB made use of the possibility to let them fail in order to apply the standard rules of the SE Directive. The agreements and their implementation were regarded by the actors on both sides as positive.

Annex

This article is based on a report on employee involvement in the SE for the European Foundation in Dublin (Eurofound), coordinated by the author together with Eckhard Voss (Rehfeldt *et al.* 2011). The report also includes an inventory of existing SEs and the respective agreements on employee involvement, for which it has used the most comprehensive and reliable source of SE-related information, which is the European Company Database, administered by Melinda Kelemen und run by the European Trade Union Institute. A major source of this report was case study fieldwork in ten companies, carried out by the author and his European colleagues Eckhard Voss, Kim Schütze (Germany), Volker Telljohann (Italy), Lionel Fulton (UK), László Neumann and Daniel Mester (Hungary). Nine case studies for which the interview partners gave their authorisation are published separately on the Eurofound website: Allianz SE (Telljohann 2011), Elcoteq SE (Mester and Neumann 2011), Equens SE (Schütze and Voss 2011), Fresenius SE (Schütze 2011), GfK SE (Fulton 2011), Hager SE (Voss 2011a), MAN SE (Rehfeldt 2011a), SCOR SE (Rehfeldt 2011b) and Strabag SE (Voss 2011b). The BASF management did not grant an interview and did not authorise the publication of the BASF case study (for an assessment of the BASF case cf. Kluge 2008). The ten companies analysed were selected in order to provide broad European coverage of the workforce involved, different countries of origin and registration, different degrees of internationalisation, different branches and sizes, as well as different types of agreements (information and consultation only vs. additional board-level representation). Seven of the analysed SEs were created by conversion, three by merger (four, if all the SCOR subsidiaries are included). These SEs were created within a time-span of five years, the first agreement being signed in 2004, shortly after the Directive came into force, and the last in December 2009. Five of the ten companies are of German origin. This reflects the situation of SEs in general: Half of all SEs with an agreement on employee involvement at the time of writing were of German origin. This proportion has not changed (cf. Stollt and Kluge 2011). Eight SEs, including the six German ones, have chosen to keep their two-tier structure (supervisory board/directory), the SEs from France and Finland have kept their one-tier structure (management board only).

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