

he Introduction of the *Societas Europaea*
SE – European Company) on 8 October 2004

abor Law Issues

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Overview

- I. Current legal situation in Europe with regard to employees' participation**
- II. Council Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees**
- III. Implementing laws of the Member States**
- IV. Assessment**

I. Current legal situation in Europe with regard to employees' participation (1)

1. General rule

Employees' participation rights exclusively governed by the laws of the respective Member State

- **Member States with a high level of participation rights**
 - ◆ **France**
 - ◆ **Germany**
 - ◆ **Italy**
- **Member States with a low level of participation rights**
 - ◆ **Spain**
 - ◆ **UK**
 - ◆ **the new Eastern Europe Member States in general**

I. Current legal situation in Europe with regard to employees' participation (2)

2. An example: Germany

- **Employees' representation**
 - ♦ **works council, joint works council, group works council**
 - ♦ **codetermination rights: e.g. economic matters (restructuring or shut down of business), dismissals, hirings and transfer of employees, social matters**
- **Employees' participation in the supervisory board**
 - ♦ **enterprises with more than 2,000 employees: supervisory board consists of equal number of employer's and employees' representatives**
 - ♦ **enterprises with more than 500 employees: 1/3 of the members of the supervisory board are employees' representatives**
 - ♦ **note: employees' participation in the supervisory board is not legal standard in all Member States**

I. Current legal situation in Europe with regard to employees' participation (3)

3. Exception

Establishment of a European works council according to Council Directive 94/45/EC

- **applicable to Community-scale undertakings/groups with at least 1,000 employees**
- **content/establishment:**
 - ◆ **Primacy of a negotiated agreement concerning the European works council between the central management of the undertaking/group and the special negotiating body (employees' side)**
 - ◆ **subsidiary rules: establishment of European works council according to subsidiary requirements laid down by the legislation of the Member States**

II. Council Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (1)

1. Primacy of a negotiated agreement

- **creation and composition of a special negotiating body**
 - ◆ **negotiates with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE**
 - ◆ **Member States determine method for the election or appointment of the members of the special negotiating body**

II. Council Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (2)

- **Content of the agreement**
 - ◆ **representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees (“works council of the SE”)**
 - composition, number of members, allocation of seats**
 - functions and procedure for the information and consultation**
 - ◆ **agreement shall provide at least the same level of all elements of employees’ involvement as the ones existing within the company to be transformed into**
 - ◆ **national works councils may exist next to representative body**

II. Council Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (3)

2. Subsidiary rules

- **applicability**
 - ◆ **agreement of the parties or**
 - ◆ **no conclusion of an negotiated agreement**
- **Standard rules (minimum requirements) set by the Directive**
 - ◆ **composition of the body representing the employees'**
 - ◆ **standard rules for information and consultation**

II. Council Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (4)

- ◆ **standard rules for employees' participation in the administrative or supervisory body of the SE**
 - if rules of a Member State relating to employees' participation in the administrative or supervisory body were applicable to a participating company/ participating companies before the establishment of the SE:**
 - **all aspects of employee participation apply to the SE**
 - **number of employees' representatives in the administrative or supervisory board of the SE is equal to the highest proportion applicable in the participating companies concerned before the registration of the SE**

II. Council Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees (5)

none of the participating companies was governed by participation rules

→ no requirement to establish provisions for employees' participation

III. Implementing laws of the Member States

- **Implementation until 8 October 2004**
- **Germany: no implementation so far, but draft of an Act on the Co-Determination of the Employees within the SE exists**

IV. Assessment

- **Directive 2001/86/EC reached only partially the aim to create a uniform legal framework within which companies from different Member States are able to plan and carry out the reorganization of their business on a community scale**
 - **reason: provisions of the Member States are applicable to the SE in many areas**
- **Practical application of the SE doubtful in Member States with a high standard of employees' participation in the supervisory board**
 - **reason: applicability of legislation with the highest employees' participation standard in the SE**