



Procedure file

Basic information		
CNS - Consultation procedure Directive	1989/0219(CNS)	Procedure completed
Statute for a European company: involvement of employees		
Subject		
3.45.01 Company law		
4.15.10 Worker information, participation, trade unions, works councils		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	EMPL Employment and Social Affairs		15/02/2001
		PPE-DE MENRAD Winfried	
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs and Internal Market		29/02/2000
		PSE MILLER Bill	
Council of the European Union	Council configuration	Meeting	Date
	Employment, Social Policy, Health and Consumer Affairs2373		08/10/2001
	Employment, Social Policy, Health and Consumer Affairs2323		20/12/2000
	Employment, Social Policy, Health and Consumer Affairs2313		27/11/2000
	Social Affairs	2226	29/11/1999
	Social Affairs	2182	25/05/1999
	Social Affairs	2164	09/03/1999
	Social Affairs	2145	01/12/1998
	Social Affairs	2127	27/10/1998
	Social Affairs	2102	04/06/1998
	Competitiveness (Internal Market, Industry, Research and Space)	2094	18/05/1998
	Social Affairs	2081	07/04/1998
	Competitiveness (Internal Market, Industry, Research and Space)	2079	30/03/1998
	Social Affairs	2060	15/12/1997
	Competitiveness (Internal Market, Industry, Research and Space)	2051	27/11/1997
	Competitiveness (Internal Market, Industry, Research and Space)	1970	26/11/1996
Social Affairs	1930	03/06/1996	
Competitiveness (Internal Market, Industry, Research and Space)	1929	28/05/1996	

Key events

25/08/1989	Legislative proposal published	COM(1989)0268	Summary
09/10/1989	Committee referral announced in Parliament		
19/12/1990	Vote in committee		
19/12/1990	Committee report tabled for plenary, 1st reading/single reading	A3-0372/1990	
22/01/1991	Debate in Parliament		
24/01/1991	Decision by Parliament	T3-0015/1991	Summary
06/05/1991	Modified legislative proposal published	COM(1991)0174	Summary
23/11/1993	Vote in committee		
23/11/1993	Committee report tabled for plenary confirming Parliament's position	A3-0364/1993	
02/12/1993	Decision by Parliament	T3-0681/1993	Summary
28/05/1996	Debate in Council	1929	Summary
03/06/1996	Debate in Council	1930	
26/11/1996	Debate in Council	1970	Summary
27/11/1997	Debate in Council	2051	
15/12/1997	Debate in Council	2060	
30/03/1998	Debate in Council	2079	
07/04/1998	Debate in Council	2081	
18/05/1998	Debate in Council	2094	
04/06/1998	Debate in Council	2102	
27/10/1998	Debate in Council	2127	
01/12/1998	Debate in Council	2145	
09/03/1999	Debate in Council	2164	
25/05/1999	Debate in Council	2182	
29/11/1999	Debate in Council	2226	
27/11/2000	Debate in Council	2313	Summary
01/02/2001	Amended legislative proposal for reconsultation published	14732/2000	Summary
09/03/2001	Formal reconsultation of Parliament		
21/06/2001	Vote in committee		Summary
21/06/2001	Committee report tabled for plenary, reconsultation	A5-0231/2001	
03/09/2001	Debate in Parliament		

04/09/2001	Decision by Parliament	T5-0417/2001	Summary
08/10/2001	Act adopted by Council after consultation of Parliament		
08/10/2001	End of procedure in Parliament		
10/11/2001	Final act published in Official Journal		

Technical information

Procedure reference	1989/0219(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 308
Stage reached in procedure	Procedure completed

Documentation gateway

Legislative proposal	COM(1989)0268	25/08/1989	EC	Summary
Economic and Social Committee: opinion, report	CES0379/1990 OJ C 124 21.05.1990, p. 0034	28/03/1990	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading	A3-0372/1990 OJ C 048 25.02.1991, p. 0004	19/12/1990	EP	
Text adopted by Parliament, 1st reading/single reading	T3-0015/1991 OJ C 048 25.02.1991, p. 0055-0113	24/01/1991	EP	Summary
Modified legislative proposal	COM(1991)0174	06/05/1991	EC	Summary
Reconsultation	COM(1993)0570	10/11/1993	EC	
Committee final report tabled for plenary, 1st reading/single reading	A3-0364/1993 OJ C 342 20.12.1993, p. 0002	23/11/1993	EP	
Text adopted by Parliament confirming position adopted at 1st reading	T3-0681/1993 OJ C 342 20.12.1993, p. 0015-0030	02/12/1993	EP	Summary
Amended legislative proposal for reconsultation	14732/2000	01/02/2001	CSL	Summary
Committee final report tabled for plenary, reconsultation	A5-0231/2001	21/06/2001	EP	
Text adopted by Parliament after reconsultation	T5-0417/2001 OJ L 072 21.03.2001, p. 0033-0065 E	04/09/2001	EP	Summary
Follow-up document	COM(2008)0591	30/09/2008	EC	Summary
Non-legislative basic document	COM(2010)0481	16/09/2010	EC	

Final act

[Directive 2001/86](#)
[OJ L 294 10.11.2001, p. 0022](#) Summary

Statute for a European company: involvement of employees

PURPOSE: to complement the Statute for the European Company (Societas Europaea = SE) with regard to the involvement of employees in the European Company. CONTENT: The proposed Directive seeks to define the involvement of employees in the supervision and strategic development of the SE, by means of the agreement between the management and the employees' representatives. Several models of participation are proposed: a model in which the employees form part of the supervisory board or of the administrative board; a model in which the employees are represented by a separate body; or other models to be agreed between the management or administrative boards of the founder companies and the employees. The employees are kept informed regularly of the situation and developments affecting the future of the company: they must be provided with the necessary financial and other relevant information to enable them to perform their duties. Employees may have a participation in the SE's capital and its results. Their representatives are elected in proportion to their number.?

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The Commission took up a number of the European Parliament's amendments in its amended proposal. These include: - the General Meeting may not approve the formation of an SE unless one of the models of participation defined in the Directive has been approved; - negotiations with respect to the model of participation will take place between the management of the founding companies and the employees' representatives in these companies; - the measures concerning the informing of the General Meeting on the negotiations, in particular when they do not result in an agreement are strengthened: the written position of the employees' representatives should clearly indicate not only why the creation of the SE would damage their interests, but also what measures need to be taken in their respect; - measures are introduced to avoid that the transfer of the seat of the SE from one Member State to another deprives the employees of the participation model to which they were originally linked; - the drafting of the provisions relating to the co-opting system is improved to clarify to simplify this procedure which was felt to be too complicated in its original version; - the various possible models see their equivalence strengthened, in particular by the transposition in the Directive of measures relating to the SE concerning information to be provided by the management board, supervisory board and within the administrative board; - certain basic principles of the selection of employee representatives are laid down: election and non-designation, secret ballot, the practical measures defined in line with the national legislation of the country in which the SE has its seat; - the material resources available to employee representatives are enhanced (e.g. assistance from experts).?

Statute for a European company: involvement of employees

The presidency noted the interest being shown by the Council in continuing to examine appropriate solutions for introducing a Statute for a European Company, which remained an important objective in the process of completing the internal market. A large majority of the delegations hoped that solutions would be found to this and other problems, in the light of the communication from the Commission on procedures for informing and consulting the workforce, and demonstrated their willingness to continue with this work while at the same time taking into consideration the guidelines that the Social Affairs Committee was to produce on the subject of the said communication.

Statute for a European company: involvement of employees

Commissioner Monti had informed the Council of the mandates and working calendar of the independent group of experts charged with identifying solutions designed to break the deadlock currently affecting the proposal for a regulation on the Statute for a European Society (SE). The mandate given to the group, which was chaired by Mr Etienne Davignon, former Vice-President of the Commission, was restricted to the investigation of solutions affecting the position of employees within the framework of the SE. The group was to present its report in early 1997. The current proposal on the SE had first been submitted to the Council in 1989, but the project had stalled because of the irreconcilable positions adopted on the provisions for employee participation in the decision-making bodies of the SE. This problem also affected proposals relating to European statutes for cooperative societies, mutual societies and associations.

Statute for a European company: involvement of employees

The Council took note of the latest information provided by the French Presidency with a view to reaching political agreement on the proposal for a directive on the involvement of employees in the European company, which was a necessary adjunct to the Regulation on the Statute for a European company. The presidency expressed its intention of making every effort to reach agreement before or at the Nice European Council. Following this presentation and contributions from delegations, the presidency drew the following conclusions: 1) the discussions revealed the determination of the 15 Member States to quickly find a way of breaking the deadlock on this issue since it was an essential element in completing the internal market and contributed to a more general effort to increase employee involvement; 2) Member States stressed that the involvement of employees in the European company should: - take account of the diversity of national cultures as regards

industrial relations; - give priority in this context to free negotiations between participating companies and employees. Against this background, there was wide agreement to involve employees in the European company; 3) Member States noted that at this stage the only question remaining open was that of the provisions applicable in the absence of an agreement between employee representatives and management, where only a minority of the employees concerned benefited from such rights. They felt that one solution to resolve this difficulty would perhaps be to make the transposition or non-transposition of the reference provisions on participation optional for Member States. They agreed to continue their efforts to define arrangements to implement such a solution with a view to enabling the Nice European Council to decide on the basis of a compromise acceptable in the 15 Member States.

Statute for a European company: involvement of employees

On 30 June 1970, the European Commission presented its first proposal for a regulation concerning a European Company. This proposal was modified in 1975. On 25 August 1989, the Commission presented new proposals concerning the Statute for a European Company and an associated directive regarding the involvement of employees, which were modified in 1991. The European Parliament gave its opinions on the proposals but the Council subsequently decided that the correct legal base for the proposals was Article 308 of the EC Treaty. In December 2000, the Council agreed unanimously on guidelines for political agreement on two acts concerning the European Company (SE): the Regulation on the Statute for a European Company and second, the Directive supplementing the Statute for a European Company with regard to the involvement of employees. The Council decided to consult the European Parliament again following legal/linguistic finalisation of the texts, given the substantial changes introduced since Parliament was last consulted, including the change in legal basis. Against this background, the rules relating to employee involvement in the SE are the subject of the Directive on which agreement was reached in the Council in December 2000. The provisions contained in that Directive form an inseparable complement to the aforementioned Regulation and must be applied in parallel. This Directive supplements the Regulation as regards the involvement of employees in the affairs of the European Companies, in order to ensure that the creation of an SE does not entail the disappearance or reduction of employee involvement existing within the companies participating in the establishment of an SE. Other provisions of the Directive include procedures for the information and consultation of workers at transnational level and the management or administrative organs of the participating companies deciding to set up an SE. Finally, Article 7 (c) of the Directive is changed to allow for Member States to fix the rules which are applicable in the absence of any decision on the matter for a Statute for a European Company registered in their territory. ?

Statute for a European company: involvement of employees

The committee adopted the report by Winfried MENRAD (EPP-EP, D) amending the proposal under the consultation procedure. Firstly, it felt that Article 137(3) rather than Article 308 would be a more appropriate legal base since the directive concerned the representation and collective defence of the interests of workers. The committee also pointed out that the directive provided only minimum standards for information, consultation and participation of workers. MEPs argued that after substantial structural changes, such as mergers, employees should be given an opportunity for new negotiations on their future participation. In order to avoid having 15 different sets of implementing provisions in the various Member States, the transposition of the directive should be coordinated by setting up an implementing group comprising experts from Member States. The committee also wanted to streamline the definition and scope of participation. Lastly, it said that the procedure for electing employees' representatives to a European Company's administrative or supervisory body should follow existing practice or legal provisions in individual Member States.?

Statute for a European company: involvement of employees

The European Parliament approved the report by Mr Winfried MENRAD (EPP-ED, D) on the involvement of employees in the Statute for a European Company with a few amendments. (Please refer to the previous text).?

Statute for a European company: involvement of employees

AIM: To supplement the Statute for a European company (SE) with regard to the involvement of employees. COMMUNITY MEASURE: Directive 2001/86/EC. CONTENT: The Council has completed the adoption of the two legislative instruments required for the creation of a European company, namely the Regulation on the Statute for a European company (see COD/1989/0218) and the Directive supplementing the Statute for a European company with regard to the involvement of employees, the two instruments being indissolubly linked. After examining the amendments proposed by the European Parliament, the Council endorsed the instruments in the form in which they had been approved at the meeting of the Employment and Social Policy Council on 20 December 2000. The European company is regarded as one of the key elements in the process of completing the internal market. The statute of the European company will provide enterprises with a new optional instrument that will make cross-border business management more flexible and less bureaucratic, which should help to enhance the competitiveness of European business. It will make it possible for a company to be set up within the territory of the Community in the form of a public limited company, with the Latin designation Societas Europaea (SE). The SE statute will allow enterprises to operate throughout the Community while being subject to the Community legislation that is directly applicable in all Member States. Several options are open to enterprises that are based in at least two Member States and wish to opt for the SE model: they can merge, create a holding company, create joint subsidiaries or convert themselves into an SE. The statute will allow a public limited company which has its registered office and head office within the Community to transform itself into an SE without going into liquidation. The SE will be entered in a register in the Member State where its registered office is located. Every registration of an SE will be recorded in the Official Journal of the European Communities. An SE must take the form of a company with share capital. To ensure that such companies are of a reasonable size, EUR 120 000 is prescribed as the minimum amount of subscribed capital for an SE. The rules relating to employee involvement in an SE are laid down in Directive 2001/86/EC, the provisions of which are designed to guarantee that the creation of an SE does not entail the disappearance or erosion of systems of employee involvement that exist within the companies participating in the establishment of an SE. Given the diversity of rules and practices in the Member States as regards the manner in which employees' representatives are involved in decision-making within companies, the Directive is not intended to establish a single European model. Nevertheless, it lays down that SEs must have procedures for

informing and consulting their workforce on a supranational level. When rights of worker participation exist within one or more of the companies forming an SE, those rights will be preserved through their transfer to the SE on its establishment, unless the parties involved, acting through the special negotiating body representing the employees of all the companies involved in the SE, decide otherwise. ENTRY INTO FORCE OF THE REGULATION: 8 October 2001 ENTRY INTO FORCE OF THE DIRECTIVE ON EMPLOYEE INVOLVEMENT (NATIONAL TRANSPOSITION): 8 October 2004. ?

Statute for a European company: involvement of employees

In this communication, the Commission reviews Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, established by Council Regulation (EC) No 2157/2001. In preparation for this review, the Commission commissioned a report by independent experts and addressed to the Member States and to the European Social Partners a questionnaire together with the draft report.

The communication notes that the Directive has been operational throughout the EU only since 2007. According to official data, 146 SEs had been registered by mid-June 2008. Only 13 Member States had SEs registered in their territory, and of these only two (Germany and the Czech Republic) had registered more than 10.

According to the majority of Member States and the European social partners there is a lack of practical experience applying the Directive. The commission agrees with them that it is too early to revise it now. However, the Communication has identified some issues that deserve further consideration.

Employee participation at group level: some Member States and the European Trade Union Confederation (ETUC) have requested that the Directive be clarified as regards the issue of employee participation at group level. Indeed, in certain Member States employee participation is exercised also at group level, i.e. the employees in the subsidiaries have participation rights in the controlling company. Therefore, a literal interpretation of the provisions could result in employees of companies enjoying participation rights at group level being deprived of these participation rights after the SE has been created - due to the fact that the company in which they work is not a participating company within the meaning of the

Directive but merely a subsidiary of a participating company.

Changes occurring within the SE after its creation: some Member States have raised the issue of the Directive not containing provisions to deal with changes occurring within the SE after its establishment. The issue of SEs registered without employees or without operations and the fate of employees? involvement when the SE starts operations and engages employees has been particularly pointed out.

Employees? participation rights when an SE converts to a public limited company: Germany and the ETUC have pointed out that in the absence of any limitation in the Directive, the conversion of an SE into a public limited company (permitted by Article 66 of the SE Regulation) could result in the loss or reduction of participation rights if the form of company adopted is not subject to employee participation or if the level of employee participation is reduced.

The complexity of the procedure for the involvement of employees: some Member States have pointed to the need to simplify and harmonise the procedures established by the different Directives concerning information, consultation and participation of employees. BusinessEurope considers that the overly complicated and structured provisions around employee participation and the creation of the Special Negotiating Body have been a substantial obstacle impeding companies in making greater use of the European Company Statute. Greater flexibility is needed so as to strengthen the negotiating autonomy of the social partners at company level, and in so doing allow for agreed solutions tailored to the needs of the company and its employees.

Other issues: the ETUC, while considering that it is too early to revise the Directive, highlights the following issues:

- the size of the organ where participation is exercised should not be excluded from the negotiations;
- in order to ascertain the level of participation for the purposes of applying the 'before and after' principle, account should be taken not only of the participation rights exercised in practice but also of the participation rights granted by national legislation but not exercised in practice;
- employees? representatives within the SE should be given a uniform level of protection;
- the representative body should be involved, at least, at the same time as information and consultation is required by national law;
- representation of the particular interests of younger employees and of disabled employees should be ensured at European level.

Conclusion: the Commission acknowledges the complexity of the procedure instituted by the Directive for employee involvement. However, it should be recalled that the adoption of the Directive was the result of a delicate compromise among Member States that took more than 30 years of negotiations to achieve.

Taking into account that the Directive is complementary to Regulation (EC) No 2157/2001 and that the Regulation is due for review at the end of 2009, the Commission will at that time consider the appropriateness of revising both instruments and the scope of any such revision.

In the meantime, the Commission will monitor the correct implementation of the Directive, and will continue to promote exchange of best practices and to enhance capacity-building of all stakeholders by way of seminars, training courses, studies and financial support for projects submitted by employer and employee representatives.