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ABSTRACT ▪ This article presents the first systematic empirical analysis of all European Companies established at the time of writing, and focuses on industrial relations issues and the negotiated rules of employee involvement in particular. It elaborates on the election procedures, the special negotiation body and the mechanisms of employee information and consultation and board-level representation. Some tentative conclusions consider the likely impact on the development of European industrial relations.
KEYWORDS: European Company (*Societas Europaea*, SE) ▪ European Union ▪ industrial relations in the EU ▪ information and consultation

Introduction

The proposal to create a European Company (*Societas Europaea* or SE) dates back to the 1960s but was accomplished only in late 2001, with the Council 'Regulation on the Statute for a European Company' and the 'Directive supplementing the Statute for a European Company with regard to the involvement of employees'. The Directive had to be transposed into national law within three years, though some member states took longer (Gold and Schwimbersky, 2008). The European Company Statute (ECS) is purely enabling, creating the option to establish a Europe-wide legal structure, leaving existing national forms untouched. It facilitates a unified management and reporting system instead of the need to operate under substantially differing national laws and provisions.

We do not discuss here the protracted history of the ECS, nor the legal technicalities; our focus is an empirical analysis of all presently existing SEs, that is, those established in the first three years since the ECS took effect in October 2004. These early cases are relevant as examples of the first negotiated rules of employee involvement, setting a precedent for all future SEs. Our focus is on issues of industrial relations in general and

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employee involvement in particular, because these have been widely neglected in the existing literature that is dominated by legal expertise. Therefore we concentrate on the Directive rather than the Regulation.

The article is based on an analysis of the existing literature (including the rapidly growing 'grey literature'),[1] a series of semi-structured interviews with representatives of both sides and non-participating observation in some official meetings. Individual SEs have to be taken as the point of departure, but we do not provide a simple catalogue but a systematic analysis. We develop an empirically based conceptual frame of analysis which can be updated and expanded in order to cover future cases.

In the article we first present a short summary of established SEs, then elaborate on the complicated election procedures on the employees' side. The following two sections indicate details of employee involvement through SE works councils and board level representation. We end with tentative conclusions and predictions.

The Establishment of SEs: An Empirical Overview

Forms and Numbers of SEs

An SE can be established in one of four ways:

- by merger of two or more existing public limited-liability companies,
- by formation of a holding company by two or more public or private limited liability companies,
- by formation of a subsidiary by two or more companies (or from a SE itself),
- by transformation (conversion) of an existing public limited-liability company.

Different sub-forms can be identified (Gold and Schwimbersky, 2008; Schwimbersky, 2006; SEEurope-Network, 2007): there are some with unusual characteristics from an industrial relations perspective. Three of them are the most important in quantitative terms: 'empty' SEs, which are economically active but have no employees; 'shelf' SEs, which are inactive; and 'UFO' SEs, for which only few details, such as their names, are known from the registers. This most recent, semi-official term means companies that are most likely also 'shelf' or 'empty' SEs. Furthermore, there are additional types such as sold shelf SEs, failed SEs and liquidated SEs (SEEurope-Network, 2007). Companies which are active but with a minimal number of employees might be considered a further category.

TABLE 1. Registered SEs

Company (Name)	Type	Location of headquarters
Abatus Invest SE	shelf	Germany
Afschrift SE	UFO	Belgium
Alfred Berg SE	normal	Sweden
Algest SE	UFO	Luxembourg
Allianz SE	normal	Germany
Arcelor Steel Trading SE	UFO	Netherlands
Artemis Global Capital SE	UFO	Germany
Atrium Achte Europäische VV SE	shelf	Germany
Atrium Dritte Europäische VV SE	shelf	Germany
Atrium Elfte Europäische VV SE	shelf	Germany
Atrium Neunte Europäische VV SE	shelf	Germany
Atrium Vierte Europäische VV SE	shelf	Germany
Atrium Zehnte Europäische VV SE	shelf	Germany
AUFID SE	UFO	Liechtenstein
Beiten Burkhardt EU-Beteiligungen SE	shelf	Germany
Beteiligungs- und Investment SE	shelf	Germany
Bibo Zweite Vermögensverwaltungsges. SE	UFO	Germany
Blitz 07–242 SE	shelf	Germany
Blitz 07–243 SE	shelf	Germany
Blitz F07-zwei-siebenundvierzig SE	shelf	Germany
BluO SE	shelf	Germany
Bolagsstiftarna International SE	shelf	Sweden
Bolbu Beteiligungsgesellschaft SE	UFO	UK
Carthago Value Invest SE	normal[a]	Germany
Conrad Electronic SE	normal	Germany
Conrad Holding SE	normal	Germany
Convergence CT SE (formerly Atrium Erste Europäische VV SE)	normal[a]	Germany
Culture Commune SE	UFO	Belgium
Demonta Trade SE	UFO	Czech Republic
DIAG Human SE	UFO	Liechtenstein
Donata Holding SE (formerly Atrium fünfte Europäische VV SE)	normal	Germany
EBD Erste Verwaltungsgesellschaft SE	shelf	Germany
EBD European Business Development SE	shelf	Germany
EBD Vierte Verwaltungsgesellschaft SE	shelf	Germany
EBD Zweite Verwaltungsgesellschaft SE	shelf	Germany
Elcoteq SE	normal	Finland
Equipotential SE	UFO	Germany
Eurofins Scientific SE	UFO	France
Europea Capital SE	UFO	Czech Republic
Eurotunnel SE	UFO	Belgium
Fortis Intertrust Corporate Services SE	empty	Netherlands

(Continued)

TABLE 1. (Cont)

Company (Name)	Type	Location of headquarters
Fresenius SE	normal	Germany
Galleria di base del Brennero Brennerbasistunnel BBT SE	normal	Austria
GIS Europe SE	UFO	Netherlands
Go East Invest SE	empty	Germany
Graphisoft SE	normal	Hungary
Graphisoft Park SE	empty	Hungary
Hager SE	normal	Germany
I.C.E. Innovative Canmakers Europe SE	shelf	Germany
Innovatis & Cie. SE	UFO	France
Innovia PPP Solutions SE	shelf	Austria
Investimenti Belgium SE	UFO	Belgium
Istrokapital SE	UFO	Cyprus
Joh. A. Benckiser SE	normal[a]	Austria
Jura Management SE	empty	Germany
Kopstal Real Estate SE	UFO	Luxembourg
Limagrain Central Europe SE	normal[a]	France
Luxury & Sport Cars SE	UFO	Latvia
Lyreco CE SE	normal	Slovakia
MAN Diesel SE	normal	Germany
MatMar SE	empty	Austria
Max Boegl International SE (formerly Sarpedon 2006/01 Vermögensverwaltungs SE)	normal[a]	Germany
MDM Holding SE	empty	Austria
Media Corner SE	UFO	Belgium
Mensch und Maschine SE	normal	Germany
Minos 2005 and 01 Vermögensverwaltungs SE	empty	Germany
MPIT Structured Financial Services SE	empty	Netherlands
Narada Europe SE	empty	Norway
Netcon EZHZ SE	UFO	Slovakia
NH Trans SE	UFO	Czech Republic
NordiTube Technologies SE	shelf	Sweden
Odfjell SE	normal	Norway
Odfjell Terminals SE	empty	Norway
Omnia Holding SE	UFO	Czech Republic
Orchestra Service SE (formerly Pro-Jura0407 SE)	normal	Germany
PCC SE	normal	Germany
Plansee SE	normal	Austria

(Continued)

TABLE 1. (Cont)

Company (Name)	Type	Location of headquarters
Porsche Holding SE	normal	Germany
Pro-Jura 0307SE	shelf	Germany
Pro-Jura 0507 SE	shelf	Germany
Pro-Jura SE	shelf	Germany
Prosafe SE	normal	Norway
Riga RE SE	normal	Latvia
RPG Industries SE	UFO	Cyprus
RSL COM Germany SE	UFO	Germany
Schering-Plough Clinical Trials SE	empty	UK
SCOR SE	normal	France
SCOR Global Life SE	normal	France
SCOR P&C SE	normal	France
SCS Europe SE	empty	Netherlands
Seesam Life Insurance SE	normal	Estonia
SE Reussite Finances Group	UFO	Latvia
SE Sampo Life Insurance Baltic	normal	Estonia
SE TradeCom Finanzinvest	normal[a]	Austria
Sevic Systems SE	normal	Germany
Solar Equity SE	UFO	Germany
Solar Invest SE	UFO	Germany
SR International Business SE	shelf	UK
Startplattan 39001 SE	shelf	Sweden
Startplattan 39902 SE	shelf	Sweden
Strabag Bauholding SE	normal	Austria
Sunshine Invest SE	UFO	Belgium
Surteco SE	normal	Germany
Tchibo Beteiligungsinvest SE	UFO	Austria
TCN Urop SE	empty	Netherlands
Tourism Real Estate Property Holding SE	empty	Netherlands
Tourism Real Estate Services Holding SE	empty	Netherlands
ViaSky SE	UFO	Czech Republic
Viel et Compagnie-Finance SE	UFO	Netherlands
World-Wide-Invest SE	shelf	Germany
YSL Beauté Benelux SE	UFO	Belgium

[a] SE with very few employees or with other unusual characteristics (not 'normal' SEs in the sense of our definition).
Source: SEEurope-Network 2007; own additions.

We do not analyse these 'abnormal' forms in detail because they are, at least for the time being, not of direct interest for industrial relations purposes. In Table 1 we list all SEs – over 100 – registered at the end of 2007, showing their status and country of headquarters.

'Normal' SEs

'Normal' SEs with economic activity and employees are of more interest for the purposes of our study. There are only 28 already established and registered, and an additional seven others in the phase of foundation. These 'normal' SEs, which are outlined in Table 2, constitute the base of our empirical analysis – by definition, industrial relations can only occur if both, employers and employees, exist. In most cases, these SEs were or will be established by way of conversion (23 cases), while most others were or will be formed by merger (10 cases) (SEEurope-Network, 2007). In other words, the formation of a holding company or a subsidiary has not played a role in these cases. All in all, the sophisticated legal distinction of forms is of minor practical importance in the cases presently existing. In two cases, the SE has been established using a shelf SE.

These first cases display no obvious patterns regarding company size, sector and registered location of headquarters. There are smaller companies with only some dozen employees, and larger ones with a hundred thousand or more. The very first case was Strabag, with 30,000 employees; Nordea bank which was of comparable size followed,[2] as did some smaller companies. Allianz, BASF and Fresenius, the 'big players', took longer before adopting the new legal form. Data on a yearly base do not (yet) indicate clear 'trends'. There was only a small increase in the overall number of registered SEs in 2007 in comparison with 2006 and 2005. It is too early for such an analysis that will, without doubt, be useful in the long run. In contrast to the employment threshold specified in the EWC Directive, the rules on employee involvement in the SE apply regardless of the number of employees.

As far as the distribution across sectors is concerned there is no clear trend (yet). Sectors which are more internationalized than others in terms of production and composition of their workforces have not established more 'normal' SEs.[3] It seems that the decision to establish an SE is in most cases connected with company-specific problems such as a reduction of complexity (e.g. through a merger) and cost reduction.

So far the vast majority of 'normal' SEs was founded in a limited number of countries: 17 have or will have their seat in Germany and four in Austria, some others in Scandinavian countries. Interestingly enough, so far no 'normal' SE has been established in the UK or the Mediterranean EU member states. Few SEs have their seat in the new member states that joined the EU in 2004 and had to transpose the

TABLE 2. 'Normal' SEs, Established and Planned

Name [and number of employees]	**Headquarters** and other countries involved	Sector	Date of registration/date of announced intention to establish SE
Alfred Berg SE [322]	**Sweden**, Denmark, Finland, Norway	Finance	September 2005
Allianz SE [128,000]	**Germany**, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, UK	Finance	October 2006
BASF AG (planned) [95,000]	**Germany** and others	Chemicals	registration planned
Conrad Electronic SE and Conrad Holding SE [2314]	**Germany**, Austria	Trade	August 2006
Conwert Immobilien Invest AG [79]	**Austria**, Czech Republic, Germany, Hungary	Real estate	announced plan in October 2007
Donata Holding SE [3922]	**Germany**, France, Poland, Spain, UK and others	Fragrance	March 2006 (as a shelf SE)
EEX AG (planned) [37]	**Germany** and others	Energy trading	announced plan in October 2007
Elcoteq SE [19,600]	**Finland**, Estonia, Germany, Hungary, Sweden; announced to transfer its seat to Luxembourg in 2008 (although no employees there at time of writing)	Electrical	October 2005

(Continued)

TABLE 2. (Cont)

Name [and number of employees]	Headquarters and other countries involved	Sector	Date of registration/date of announced intention to establish SE
Fresenius SE [c. 100,000]	**Germany**, Italy, Sweden and others	Medical care	July 2007
Galleria di base del Brennero SE [33]	**Austria**, Italy	Construction	December 2004
Graphisoft SE [253]	**Hungary**, Germany, Netherlands, Spain, UK	IT	July 2005
Hager SE [c. 9500]	**Germany**, Austria, Belgium, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, UK	Electrical	June 2007
Interseroh AG (planned) [1380]	**Germany** and others	Trade and Services	announced plan in September 2007
Lyreco CE SE [30]	**Slovakia**, Austria, Czech Republic, Hungary	Trade	October 2005
MAN Diesel SE [6700]	**Germany**, Czech Republic, Denmark, France, Greece, Netherlands, Spain, Sweden, UK	Metal industry	September 2006
Mensch und Maschine SE [350]	**Germany**, Austria, Belgium, France, Italy, Poland, Sweden, UK	IT	December 2006
Nordea Group (planned) [29,000]	**Sweden**, Denmark, Norway, Finland	Finance	registration planned

Odfjell SE [860]	**Norway**, Netherlands, UK	Shipping	July 2007
Orchestra Service SE [60]	**Germany**, Austria	IT	October 2007
PCC SE [3756]	**Germany**, Poland and others	Chemicals	February 2007
Plansee SE [1341]	**Austria**, France, Sweden, UK	Metal industry	February 2006
Porsche Holding SE [11,500]	**Germany** and others	Automobiles	November 2007
Prosafe SE [55]	**Norway**, UK	Oil industry	February 2007
Riga RE SE [31]	**Latvia**, Germany, Ireland, Lithuania, UK	Finance	February 2007
SCOR SE and SCOR Global Life SE and SCOR Global P&C SE [801]	**France** and others	Finance	June (SCOR) and July (Global Life) and August (P&C) 2007
Seesam Life Insurance SE [200]	**Estonia**, Latvia, Lithuania	Finance	October 2007
SE Sampo Life Insurance Baltic	**Estonia**, Latvia, Lithuania	Finance	January 2007
Sevic Systems SE [100]	**Germany** and others	IT	March 2007
Strabag Bauholding SE [31,000]	**Austria**, Belgium, Czech Republic, Germany, Hungary, Italy, Netherlands, Poland, Slovakia, Slovenia	Construction	October 2004
Suomi Mutual Life Assurance (planned)	**Estonia**, Latvia, Lithuania, Poland	Finance	announced plan in August 2006
Surteco SE [2109]	**Germany**, Italy, Poland, UK	Paper and plastics	November 2007
Wacker Construction AG (planned)	**Germany**, Austria	Metal industry	announced plan in August 2007

Source: SEEurope-Network 2007; own additions.

Directive as part of existing Community law.[4] Thus so far, and in contrast to multinationals which are subject to the EWC Directive, eastern enlargement of the EU has had no major impact. The reason seems to be that the foundation of SEs constitutes a mere option whereas in the case of EWCs there is a requirement to adapt to existing regulation. Last but not least, it is notable that non-European multinational companies have not yet established SEs.[5]

The Initiation Phase

Principles

The decision to establish is up to a company's management and administrative organs; employees and their representatives have no formal influence, even though the particular form of establishment has a major impact on the nature of subsequent employee involvement (Patra, 2006). For instance the so-called 'standard rules' (Article 7 of the Directive), specifying default standards of employee involvement if the negotiating parties cannot reach an agreement within the six month deadline, apply only in the following cases (Köstler, 2006):

- if the SE is established by conversion, and participation rights already existed;
- if the SE is established by merger, and at least 25 percent of employees (or fewer if the SNB makes a decision on this issue) previously had participation rights;
- if the SE is established by the formation of a holding or a subsidiary and more than 50 percent of employees (or again, fewer if the SNB makes a decision on this issue) previously had participation rights.

An SE may not be registered with the national authorities before 'both sides of industry' have reached an agreement on employee involvement at least in the form of information and consultation (Article 12 (2) of the Regulation).[6] In contrast to the EWC Directive, the management or administrative bodies of the participating companies have to take the initiative; a special request by the employees or their representatives is not necessary. For employee representatives from some countries, the SE provides the first opportunity to influence managerial decision-making at group level, whereas for others it might reduce their impact.

There is no precise legal provision for the scope and content of employee involvement. According to Article 4 of the Directive, the agreement shall – 'without prejudice to the autonomy of the parties' – only specify items such as 'the composition, number of members and allocation of seats on the representative body, the procedure for the information and consultation, the

frequency of meetings and financial and material resources', and such matters as the date of entry into force and its duration. The crucial point is that, in contrast to national regulation in countries such as Germany, all procedural and substantive details are not fixed by legislation but are freely negotiable between central management and the employees of the company (Blanke and Köstler, 2006; Nagel and Köklü, 2004).

The Special Negotiation Body

In all negotiations during the founding phase, employees of the forthcoming SE are represented by a 'special negotiation body' (SNB) whose members are elected or appointed in proportion to the number of employees in each member state. The fairly complicated procedural arrangements share some similarities with those of the EWC Directive (Müller and Platzer, 2003), though in contrast to the latter there is proportional rather than geographical representation of the workforce.

Fulton (2006) and Ioannou (2006) identify three different approaches to the selection of SNB members: in seven countries, such as Austria or Germany, they are chosen by national works councils; in 16, such as Cyprus, Norway and Sweden, the unions choose them; and in Estonia, Malta and the UK they are directly elected by the employees. The Directive allows three potential outcomes of the negotiations between central management and the SNB:

- the 'zero option', if the SNB decides (by a two-thirds majority representing two-thirds of the employees) not to commence negotiations, or terminates these;
- application of standard rules, in the case of failure to agree within the deadline;
- an agreement between both sides.

Our data show that most negotiations so far resulted in an agreement.[7]

In companies with an EWC before the foundation of an SE, the SNB usually mirrors the composition of the EWC. Cooperation and exchange of information and accumulated expertise are easier to reach if some form of institutionalized interaction already exists. SNB members are also usually organized in their national trade unions. Some SNB members, especially its chair and the representatives of the countries with most employees, exert a strong informal influence because they keep in touch between formal meetings – or even negotiate with management's representatives about certain open questions before an 'official' meeting takes place. If the SNB is large, a smaller negotiation commission, comparable to the select committee of an EWC, is usually established.

External Resources

External experts can be hired by both sides, and central management frequently hires law firms. On the employee side the number of external experts is frequently limited to one during the key phase of implementation, when general prescriptions have to be adapted to national rules as well as customs and practices (EWCB, 2006). Trade unions support the activities of the SNB and their national and European representatives can be full members, if the national legislation implementing the Directive provides this option. Their status is less contested than under the regulations for the establishment of an EWC, because of these legal provisions.

European Industry Federations (EIFs) play some role in these processes: as in the case of EWCs (Waddington, 2006) they prepare guidelines for the negotiations before the first negotiations take place. The European Metalworkers' Federation (EMF) was especially active in the early stages (EMF, 2003), others were inspired by its work (UNI-Europa, 2004). These guidelines are intended to bind the SNBs during negotiations regarding 'information, consultation and participation rights of workers in an SE'; 'the development of these guidelines was not an easy exercise … because of national differences on this issue' (Triangle, 2005: 207). These tasks of supranational coordination present new challenges for trade unions – and their scarce resources.

Processes of Internal Bargaining

Research on EWCs (Lecher et al., 2001, 2002) indicates that bargaining takes place not only between central management and SNB but also between employees' representatives from different countries. External trade union representatives have a major function in balancing differing interests and expectations on the employee side, often reflecting ignorance of the customs and practices of other countries.

Conflicts between representatives from different countries also surface over such questions as simultaneous translation and the distribution of seats on SE supervisory bodies. Such internal difficulties and conflicts must be resolved and common positions reached before negotiations with central management can be launched without weakening employees' bargaining position. Mediation of interests by trade union experts, often combined with reference to the legal requirements, assists in finding a solution.

SE Works Councils

In the SEs which we investigated the 'representative bodies', normally called 'SE works councils' (SEWCs), are usually a continuation of

formerly existing EWCs in terms of membership and structures. Normally there is a division of competences between new and pre-existing institutions: the SEWC only addresses issues concerning the SE itself, while bodies at other (especially national) levels continue to be responsible for issues of national subsidiaries (Blanke, 2006). It is usually stated in the negotiated agreements that national bodies may transfer parts of their competences in specific cases to this supranational level, as long as this is permitted by national legal requirements.

The agreement on employee involvement also deals with the rights of SEWCs, so far always limited to information and consultation, with no bargaining rights. However, some SEWCs (like EWCs) may subsequently acquire a bargaining capacity, especially over 'technical' issues.

Size and Composition

The overall number of SEWC members depends on the number of employees or, to be more precise, on their national proportionality. In most cases its composition parallels the former SNB, both in the distribution of seats across countries and in individual membership.

Almost all existing SEWCs are employee-only bodies, as in the German works council model; only in a French case there is a joint employee–management committee. This reflects a form of 'path dependency': the vast majority of SEs has been established in member states which have institutionalized this form of employee involvement, whereas the French case follows the French model.

In the majority of EWCs there exist smaller steering or select committees for the organization of day-to-day activities (Kerckhofs, 2006). Similar committees exist in SEWCs, at least in the larger SEs. They usually consist of the SEWC chair and deputies, and represent the most important countries in terms of the number of employees.

Resources and Duration

Resources tend to vary with the size of the SE. On issues such as release from work and dismissal protection for SEWC members, agreements often refer to (national) 'provisions applicable in each case' which means that members of the same SEWC employed at different national plants could be covered by different provisions. In most cases two ordinary annual meetings are to take place with central management, though some agreements prescribe only one. Extraordinary meetings are also usually possible. Preparatory meetings are also permitted. All expenses are paid by the company.

Training is of key importance for the work of SEWCs. A typical agreement states: 'members of the SEWC have a right to participate in training

and educational events, insofar as these provide knowledge which is necessary for [its] work'. This can include economic and social matters, and also language courses. In most SEs, management insist on English as the working language in order to reduce translation costs, so SEWC members are often expected to follow English language programmes if necessary. The SE may also agree to pay for external experts.

Typically an agreement will specify a period during which it cannot be terminated by either side. This is usually quite long, from four up to ten years. In some cases, individual sections of the agreement (for example, those relating to SEWCs or board-level participation) can be terminated independently. The period of notice to terminate the agreement is usually six months but can be up to a year. There is one agreement with very few rights for the employees in which these questions are not addressed at all.

The Importance of the Standard Rules

As noted above, there are 'standard rules for information and consultation' which apply if negotiations between management and the SNB fail to reach an agreement. From a purely legal point of view these statutory fall-back provisions and reference positions do not constitute binding minimal standards. From our analysis it is obvious, however, that they serve as the baseline in negotiations and predetermine the scope and content of agreements in the vast majority of cases.

These standard rules create a certain 'shadow of the law'. Management cannot reasonably offer less, at least if it does not want to risk the complete breakdown of negotiations and serious damage to relationships with employee representatives. The latter know that it will be difficult to obtain more favourable results without the purely voluntary consent of management.

The effect of the 'standard rules' is comparable to that of the 'subsidiary requirements' for negotiations on the foundation of EWCs. Only a small number of agreements surpass the thresholds specified in these minimum standards (Kotthoff, 2006). The Directive does allow for 'equivalent procedures' instead of an SEWC; but as with parallel provisions in the EWC Directive, this is of no practical importance.

Board-Level Representation

National systems of corporate governance take two main forms. 'Single-tier' systems have only one administrative board (or board of directors); 'two-tier systems' consist of a management board and a supervisory board which monitors the former. The majority of EU member states

(19 out of 27) provide for some kind of employee representation at board level (Kluge and Stollt, 2007). There are, however, significant differences both qualitative and quantitative; variation across countries is even wider than in the case of employee involvement.

Forms of Corporate Governance

SEs have a free choice between the two forms of governance (though previous drafts indicated a preference for the two-tier model). Among 'normal' SEs, 20 have adopted a single-tier and 15 a two-tier structure. Not surprisingly, in most cases management has opted for the governance structure that prevails in the country of registration (Schwimbersky, 2006).[8]

There are, however, ten exceptions, most of which are German.[9] Why do some managements opt for a single-tier board when a two-tier structure is normal in the country of registration? The only common denominator in these cases seems to be that they are owner-managed companies: the majority share-owners are actively involved in running 'their' company and do not see a need to be controlled by a supervisory board with employees' representatives.

Size and Composition

The basic decision on the overall number of board members and, of particular importance from the employees' point of view, the number of employee representatives on the administrative or supervisory board, is beyond the scope of negotiations between the SNB and management. As already noted, this decision is made by the owners in the so-called 'terms of foundation', well before negotiations with the SNB are launched. In principle the terms of this initial decision could be changed in the subsequent negotiations on employee involvement; but this is rather unlikely to happen.

In two-tier systems the decision to establish an SE is occasionally used to reduce the overall size of the supervisory body, which normally entails that there will be fewer employee seats. The size and composition of the governing body have hardly ever been a major topic in negotiations about employee involvement, although employee representatives have sometimes tried to introduce this. In most cases it was clear that the 'terms of foundations' were not open to amendment. However, the proportion of employee representatives on the governing bodies has never been reduced through the creation of an SE.

In all SEs, employee representatives on the company boards possess, at least formally, the same rights as those from the employer's side. However, some claim to experience difficulties in obtaining all appropriate

information. In single-tier systems in particular, some employee board members report that they are subject to new responsibilities, including financial liability. This can be particularly problematic if employee members feel that they do not receive all the necessary information.

Trade-Offs

In legal terms the decisions on SEWCs and board-level representation are independent, and some observers have assumed that negotiations on the two aspects of employee involvement would be separate and would mainly focus on board-level representation (Mävers, 2002). In practical terms, however, both forms are interrelated. This opens the possibility of trade-offs between these two issues: one concerns internal interests on the employees' side, for example, employees from a country without representation on the supervisory board might obtain an additional seat in the SEWC. Since outside trade union officials are more interested in board-level representation than in membership of the SEWC, they may accept exclusion from the latter in exchange for membership of the former, simply accepting a role as sources of information, agents of coordination and providers of support for the internal members.

Another type of trade-off again concerns the levels of employee involvement. Concessions in terms of the number of employee representatives at board-level may be used as an argument for enhanced rights and resources for the SEWC. The existence of two levels of representation thus creates opportunities for trade-offs which do not exist in the case of EWCs.

Cross-national trade-offs can arise because representatives from individual member states (for example, France and Germany) may have different interests. One group may not be very interested in topics dealt with at board-level, and opt for strengthening the SEWC instead. The reasons are that actors are familiar with one set of formal and informal rules but not with the other because of lack of experience at national level. In other words, the latter form is, for ideological and/or historical reasons, not a national priority in all member states (Taylor, 2006).

A German Perspective

Some of our findings are of particular interest from a German perspective. Recently there has been a heated political debate in Germany about the implications of the SE Directive for existing national laws on codetermination. Some have argued (BDA and BDI, 2004; von Werder, 2004) that countries with extensive forms of mandatory employee involvement would suffer from being less attractive as country of registration for SEs. The experience shows, however, that exactly the

opposite is the case: Germany seems to be a particularly attractive location for the establishment of SEs. Though there is simply no evidence that existing regulations present a competitive disadvantage for companies based in Germany either to establish or to become part of an SE, calls to weaken existing rights of codetermination continue.

As we have indicated, the overall number of 'normal' SEs so far is small. It is therefore not justified to assert a general danger for the national system of codetermination because of developments at EU level. At least for the time being there is no trend towards 'escape from codetermination' or its 'erosion', as is feared by (quite a few) trade unionists. In the long run, however, differences of interests between national representatives might be used by management to weaken existing forms of employee involvement.

The 'before and after' principle means that rights of employee involvement which existed in at least one of the companies establishing an SE have to be preserved. However, the Directive requires that existing opportunities of employee involvement are only to be protected, not necessarily expanded. If only companies from member states without provisions for board-level participation (such as Italy and the UK) are involved in the creation of an SE, there is no need for any kind of employee representation on the board. Some attempts have been made to change the status quo but were prevented by trade union opposition. As already mentioned, the vigilance of EIFs may be necessary in this regard.

Perspectives and Future Relevance

One caveat has to be kept in mind. Our analysis is of a preliminary nature because it is inevitably too early to assess the actual work and real functioning of the various forms of negotiated employee involvement within the SEs, and their impact on national industrial relations institutions and practices. Our work is thus analogous to the early studies of EWCs (such as Marginson et al., 1998). Therefore follow-up studies will be necessary in order to evaluate long-term consequences for institution-building at supranational level. As mentioned in the introduction, our analysis can be extended to future cases, and could be combined with case studies.

Perspectives

It is very unlikely that a single model of employee involvement will come into existence. It is realistic to assume that future forms will vary substantially not only between but also within member states and, even more, from one SE to the next.

First of all, existing national regulations differ significantly and exert a major impact at supranational level. Because the Directive left critical issues to the political choice of individual member states, there is a diversity of nationally modelled transpositions. The dominance of established national customs and practices during the phase of transposition process has strengthened this tendency (for the specific case of the UK, see Villiers, 2006). These processes were highly politicized and subject to abundant lobbying activities by national social partners; especially where there was sharp disagreement, national governments had ample room for political manoeuvre (Keller, 2002).

Second, all agreements concluded within SEs are tailor-made and enterprise-specific, because they are the result of free negotiations between central management and the SNB. In other words, they are based on the primacy of the principle of subsidiarity, resulting in rather heterogeneous negotiations.

Any kind of 'upward harmonization' of widely differing national rules towards a unified, genuine European system of industrial relations constituted an ambitious political goal but has proved, as we also know from other policy fields, not a realistic concept for integration policies in a diverse polity (van het Kaar, 2006). It constituted the fundamental model of social regulation during the 1970s and early 1980s, but proved impossible to achieve because political consensus in the form of unanimity could never be reached in the Council of Ministers. Therefore it had to be replaced by more realistic, 'flexible' concepts. The ECS, as Villiers comments (2006: 187) 'does not aim to introduce new or additional aspects of employee involvement but rather it seeks to prevent the disappearance or reduction of what already existed prior to the establishment of an SE'. This specific regulation is not about any kind of European 'harmonization' but about the preservation of nationally institutionalized rules and standards.

Thus the obvious trends towards wide-ranging, 'flexible' rather than unitary and 'voluntaristic' rather than binding forms, which had been initiated by the EWC Directive in the early 1990s, will not only be continued but even be strengthened. Any tendency towards 'convergence' would be a rather unlikely result of these processes; instead, already existing 'divergence' is likely to increase. In other words, high degrees of diversity or even fragmentation are to be expected as the result of implementation in individual SEs. Contributions to some kind of 'Europeanization' of industrial relations, which a few insiders as well as outside observers have expected, are unlikely to occur.

The ECS and its supplementing Directive constitute a prototypical example of what in another context has been labelled 'negotiated Europeanization' (Lecher et al., 2002). Since the early 1990s this dominating principle of regulation leaves responsibility for the results with the

private actors and not the public ones, such as the Commission. Last but not least, the ECS is an integrated part of the fundamental change from substantive to procedural regulation. In other words, present legal regulation indicates norms for procedures and modes only, whereas older ones also included more or less detailed rules of substance. All issues of substance and content of employee involvement are freely negotiable.

The Future Relevance of SEs

One has to keep in mind that the ECS constitutes a project of economic rather than of social integration. Within this frame of reference one crucial question is, of course, related to the future number of SEs – which in our specific context of employee involvement means 'normal' SEs with economic activities as well as employees. There are two opposing predictions: one expects a significant increase, the other only a limited number of new foundations. At least for the time being, the second scenario seems to be more realistic for various reasons. Alternative strategies for transnational mergers and acquisitions of companies have been made available by legal action (the 2005 Directive on the Cross-Border Merger of Limited Liability Companies and the projected Cross-Border Transfer of Registered Office of Company Directive). Consultancies have already developed analyses of the circumstances under which a cross-border merger is more favourable than other options such as the establishment of an SE. Choices in individual cases are impossible to predict.

Creating an SE is supposed to realize economies of scale and savings in transaction costs (including administrative and legal costs). This advantage is only likely to be a sufficient incentive for management, however, if large enough to create sufficient incentives. Last but not least, existing problems of taxation have not yet been solved (Wenz, 2006). A common EU tax policy which would create a major incentive to establish an SE does not exist – and is not likely in the foreseeable future.

If this reasoning is correct, the practical impact of the SE on the development of the 'European social model' in general and European industrial relations in particular should not be overestimated. There could be, however, another important consequence in the longer run. SEs could be a major factor in the emergence of supranational 'enterprise-specific' industrial relations that would become separated from national systems, especially from collective bargaining at sectoral level as it exists in the majority of Western EU member states. Thus it could contribute to new forms of trans- or supranational 'enterprise syndicalism'. Such a development would increase the already existing degree of fragmentation. Thus the original idea to establish a unified legal form by means of the SE would be turned into its opposite.

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NOTES

1 One important source of reference is the 'SEEurope-Network' at [http://www.worker-participation.eu], a project financed by the European Trade Union Institute and the Hans-Böckler-Stiftung.

2 Nordea has not been registered as an SE yet. There are unsolved problems regarding the transfer of the banking liability system. Nonetheless an agreement about employee involvement in the future SE has already been signed.

3 On the other hand, most of the 'non-normal' SEs operate in the financial sector.

4 These include Graphisoft SE (Hungary) and Lyreco CE SE (Slovakia), and several small insurance companies based in Estonia (Seesam Life Insurance SE, SE Sampo Life Insurance, Suomi Mutual Life) and Latvia (Riga RE SE). There is not much known about these companies. Lyreco CE SE is a subsidiary of a French company. Some observers argue that the establishment of an SE in these cases might be a 'test' of how this new legal form works, opening an option for the parent company. Graphisoft SE was established in the Netherlands and transferred its seat to Hungary, where most of its employees now work; this is so far the only 'normal' SE to transfer its headquarters from one member state to another. Elcoteq SE has announced a transfer from Finland to Luxembourg, although it has no employees there.

5 It was assumed that the SE might be an option for General Motors in order to merge its European subsidiaries (Opel, Vauxhall, Saab). Such firms may be waiting until various outstanding taxation questions are resolved (Wenz, 2006).

6 The management of the planned Zoll Pool Hafen Hamburg SE (a 'normal' SE) tried to obtain registration without such negotiations, and the application was rejected; management then decided not to proceed (Blanke, 2005). In some cases concerning shelf SEs, other courts came to different judgements.

7 Strabag, the first SE, is of special interest in this regard. The owner simply asked the chair of the EWC to sign an 'agreement' stating that all employee involvement should remain as it was before (i.e. a mainly 'Austrian' EWC). The court registered the SE in October 2004 despite the fact that there had not been any negotiations. Some trade unions refused to accept this and initiated court action. After a long dispute, management finally agreed to negotiate with representatives of all employees concerned, including the foreign ones, eventually reaching an agreement (Kluge, 2006).

8 This is also the case with EWCs: most 'joint bodies' on the French–Belgian model are based in France, whereas most 'employee-only' bodies on the German–Dutch model are based in Germany (Kerckhofs, 2006).
9 Conrad Electronic SE, Conrad Holding SE, Donata Holding SE, Lyreco CE SE, Mensch und Maschine SE, Orchestra SE, PCC SE, Plansee SE, Sevic Systems SE and one planned SE, Conwert Immobilien Invest AG.

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