Statute for a European company: involvement of employees

1989/0219(CNS) - 30/09/2008 - Follow-up document

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 operationsand 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: **s**ome 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.