Transformation into a European Company (SE)

Transnational Restructuring Navigator

When a company wants to change its legal statute to that of a European Company (Societas Europaea – SE)

What you should know about it:

- SEs are regulated by EU law under Regulation EC 2157/2001 and the Directive on worker involvement, 2001/86/EC. Most SEs have been established so far in Germany with around 80% of all SEs (data for 2021), followed by France with around 15%.
- In addition to the traditional legal forms, such as the French Société Anonyme or the German Aktiengesellschaft, a new supra-national form has been created in 2004: the **European Company**. The European Company – also known as SE (Societas Europea in Latin) – is a type of public limited-liability company that allows companies to run business in different European countries using a single set of rules.
- From the **workers perspective**, the SE creates new perspective of European level workers participation and co-determination in management or supervisory boards: When a national joint stock company is transformed into a European Company (SE), an SE agreement is concluded on the information, consultation and participation of workers. It regulates the composition of the Supervisory Board and the powers of the European SE Works Council.
- At the same time it become an **important instrument to undermine or circumvent workers participation** and co-determination right.
- This particularly is the case when the main motivation of transforming a company into an SE, is to "freeze" workers board level participation or to "reduce the number of members of the board".
- According to the said directive, **worker involvement in the SE includes the rights to information, consultation and participation:**
    - Similar to an EWC, the representatives of workers within an SE Works Council are informed and consulted.
    - In cases where the provision of board level representation pre-existed (i.e. in most of the EU Member States) and were applied in practice, the SE-legislation provides for a "*before-after principle*" which means the workers in such SEs have the right to elect or appoint some members of the Board (participation).

- There are four different ways of creating an SEs: by merger (to form a European Company); by **forming a European Holding Company**; by **forming a European subsidiary**; or by **conversion into an SE**.

Your mission is to...

- Negotiate the best possible SE agreement on information, consultation as well as workers participation at board level (if relevant) for the workers affected by the transformation of your company into an SE.
- Involve your national and European trade union federations in the process and make sure you will be supported by trade union experts from the beginning
- As a workers' representative, when learning about the plan of your company to transform into an SE, gather as much as possible information about the motivation and main interests behind it.
- If there are good grounds for the assumption that the company's interest is to freeze or even circumvent mandatory workers participation at board level, you should seek advice from your national and European trade union federation.
- In any case try to avoid the reduction of worker information, consultation and participation rights by the transformation of your company into an SE, (e.g. through the creation of a holding company in a foreign country without workers participation; by reducing the number of seats in the administration or supervisory board or "freezing" workers participation rights)
- In case of merger or conversion of a transnational company into an SE, get in touch with the workers representation in the other company/companies involved –it is highly recommended to do so by getting in touch with your local and European sectoral trade unions organisation to facilitate this process.
- If the joint venture has a transnational character and involves two or more EWCs, get in touch as early as possible and plan for negotiations to either include the future joint venture within scope of one of the existing EWCs or to establish a new EWC.

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Timeline matrix

Management obligations

European Works Councils SE Works Councils

- In case of transforming a company that already has an EWC the management has the obligation to inform the EWC as soon as possible (see intended decision).

Local worker representations

- In case of a company without an EWC, the management should inform the respective workers representation body or trade union committee about the plan to transform the company into an SE.

Worker representatives on the Board

- Management should inform the board members about the corporate strategy and any plans that are likely to affect the workforce at a very early phase and well in advance of any final decision.

Workers' rights and action

European Works Councils SE Works Councils

- As soon as rumours appear, the EWC or national workers representation body should gather as much possible information about the intentions and motivations of the company.
- The use of worker board level representatives as a source of information is recommended.
- Worker representatives often lack the necessary background information at the beginning, as the legal form of the SE is still a topic for a small circle of experts. The legal bases are numerous and not always clearly harmonised: e.g. SE Regulation 2157/2001 and SE Directive 2001/86/EC as well as national implementing laws transposition the EU norms into the legal system of your country.
- Get in touch with your trade union coordinator and your European trade union federation to secure the full information of all concerned trade unions and start preparing a joint trade union response.
- As your EWC agreement will be transformed into an SE agreement that will not only include information and consultation rights but possibly also workers board level representation rights, you should get in touch with your fellow EWC colleagues to get prepared and exchange the available information.
- Make yourself also familiar with legal requirements and provision about merger and merger control procedures and regulation in your country.

Local worker representations

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For workers representatives that do not have an EWC in place, the need for gathering support and advice is even more important.

- As soon as rumours appear, national workers representation body should gather as much possible information about the intentions and motivations of the company.
- The use of worker board level representatives as a source of information is recommended.
- Worker representatives often lack the necessary background information at the beginning, as the legal form of the SE is still a topic for a small circle of experts. The legal bases are numerous and not always clearly harmonised: SE Regulation 2157/2001 and SE Directive 2001/86/EC as well as national implementing laws transposition the EU norms into the legal system of your country.
- Get in touch with your trade union coordinator and your European trade union federation to secure the full information of all concerned trade unions and start preparing a joint trade union response.
- Make yourself also familiar with legal requirements and provision about merger and merger control procedures and regulation in your country.

Worker representatives on the Board

- Worker representatives on the board have access to the same information as shareholder representatives. If any rumours about a transformation into an SE are going around and such plan has not been communicated to the board yet, then the issue can be raised at the next meeting, asking for full disclosure of the business case. If such plan was already shared with the board, signals can be sent to the EWC, local worker representatives and/or trade union officers that indeed such legal change is being prepared. Caution: specific rules on confidentiality may apply.

Trade union action

European Works Councils SE Works Councils

- Trade unions at national level should provide support for workers representatives in the EWC to get prepared for the process of negotiating a good SE agreement.
- In case of larger and a transnational nature involving more than one EWC, the European trade unions federation(s) should also be informed and involved in the process.
- Trade unions should be very sensitive about any intentions of the company management to use the SE creation as a tool to weaken worker involvement at board level by reducing the overall number of board members or “freezing” workers involvement at a level that does not consider situations where due to workforce increase the number of Board level worker representatives would also increase.
- Important to note that trade unions at national and European level can act as experts and can also become members of the Special Negotiation Board that has to be constituted to negotiate an SE Agreement. This is guaranteed in the SE Directive and must also be guaranteed in the national

legislation implementing the Directive.

Local worker representations

- Trade unions at national level should provide support for workers representatives to get prepared for the process of negotiating a good SE agreement.
- In case of larger and a transnational nature, the European trade unions federation(s) should also be informed and involved in the process.
- Trade unions may also consider to actively participate in the SNB that negotiates the SE agreement. See for more details in the section on negotiations.

Worker representatives on the Board

- In some cases, trade union officers may have a mandate on the company board. If that is not the case, then a close contact to the worker representatives who are on the board will be essential. This will allow rumours to be quickly verified and, if confirmed, to prepare further steps (see the following sections in the timeline).

Role of public authorities

European Works Councils SE Works Councils

- No role of public authorities at this stage. However, you may inform yourself about the role of national or local public authorities in the context of receiving information and data and how they will be published at national and European level.

Local worker representations

- No role at this stage and context.

Worker representatives on the Board

- No role in at this stage and context.

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Further reading and resources

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Are employee participation rights under pressure? Trends at national and EU level.

ETUI Policy Brief.

Author(s): Aline Conchon

Organisation(s): ETUI

Type: PDF

Category: Research

Language: English

Access: Public

Year: 2012

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Frequently Asked Questions (FAQ) on SE WCs

Workers Participation Website.

Organisation(s): ETUI

Type: Website

Category: Research

Language: English

Access: Public

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

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European Company (SE) facts and figures (2014)

ETUI, Brussels.

Organisation(s): ETUI

Type: Website

Category: Research

Language: English

Access: Public

Year: 2014

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

SE Companies in 2017. Workers' Participation Europe Network, ETUI

Author(s): Anders Carslon

Category: Research

Language: English

Year: 2017

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Fakten zur Europäischen Aktiengesellschaft. Stand: 31.12.2021. Hans Böckler Stiftung

Author(s): Sophie Rosenblohm / Sebastian Sick

Type: PDF

Category: Facts and data

Language: German

Access: Public

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Year: 2021

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Legal expert report on the topic that provides a comprehensive overview of the issue across EU Member States

Type: Website

Category: Legal

Language: English

Access: Public

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Communication of the EU Commission

Organisation(s): European Comission

Type: Website

Category: Legal

Language: English

Access: Public

Year: 2009

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

The SE Directive only safeguards co-determination to the extent that it exists at the time of the SE's registration and does not provide for any adjustments thereafter ("before and after principle")

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In particular in Germany, more and more companies are utilising this "loophole" and transforming themselves into an SE.

Category: Legal

Language: English

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

The transformation of a company governed by national law into a European company (SE) must not reduce the participation of trade unions in the composition of the Supervisory Board

Organisation(s): CJEU

Type: PDF

Category: Legal

Language: English

Access: Public

Year: 2022

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TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Basic information on the SE legal form and related procedures and employer obligations on the EU Website “Setting up a European Company (SE)”

Type: Website

Category: Legal

Language: English

Access: Public

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees

Type: Website

Category: Legal

Language: English

Access: Public

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Arbeitnehmerbeteiligung in der Europäischen Aktiengesellschaft (SE). Handbuch für die Praxis

Author(s): Michael Stollt / Elwin Wolters

Type: PDF

Category: Union guides

Language: German

Access: Public

Year: 2012

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Article on freezing or escaping workers participation rights in Germany with recent data

Felix Gieseke / Fokko Misterek / Sebastian Sick (2021): 4 von 5 großen SE vermeiden die paritätische Mitbestimmung (www.mitbestimmung.de)

Type: Website

Category: Union guides

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Language: German

Access: Public

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Website on SEs of the German Hans-Böckler Foundation

Category: Union guides

Language: German

Access: Public

TRANSFORMATION INTO A EUROPEAN COMPANY (SE)

Negotiations on workers involvement in the European Company

Very useful practical guideline on the negotiation of SE agreements for trade unions and workers representatives.

Organisation(s): ETUC

Type: PDF

Category: Union guides

Language: English

Access: Public

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