

# Employee Involvement in the European Company ('*Societas Europaea*')

**Nicholas Bridgland LL.M, Barrister, Grad C.I.P.D.**  
[nbridgland@whitecase.com](mailto:nbridgland@whitecase.com)

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# European Company: History



## HISTORY OF THE EUROPEAN COMPANY PROPOSAL

# European Company: History



- First Commission proposal: 1970
- Employee participation based on German model
- Required
  - (i) one third employee representation on a supervisory board, and
  - (ii) the creation of a works council.

# European Company: History



## **1989: a new proposal offered four choices:**

- i) original two-tier board of the first proposal;
- ii) a single board with employee representatives as non-executive members;
- iii) a company-level representative body of employees only;
- iv) a participation structure meeting certain minimum standards, agreed on collectively by employer and workforce.

# European Company: History



- Failure of both 1970 and 1989 SE proposals at an early stage of the legislative process.
  
- **Result:**
  - Worker involvement is for the most part regulated at national level.
  
  - Varying levels of mandatory worker involvement rights across Europe.

# European Company: History



## Employee involvement: Pre-European Company Statute.

- Ad hoc protection through Directives relating to employee information and consultation:
  - Collective Redundancies (Directive 75/129/EEC).
  - The Transfer of Undertakings (Directive 77/187/EEC).
  - European Works Council (Directive 94/45/EC).
  
- **No EC legislation on employee participation.**

# European Company: Agreement at Nice



## BREAKTHROUGH !

**AGREEMENT BY THE HEADS OF STATE AND  
GOVERNMENT AT THE NICE SUMMIT IN  
DECEMBER 2000**

# European Company: Agreement at Nice



## December 2000 - Nice Summit Agreement.

- Difficult political compromise between Member States regarding employee involvement;
- Political compromise borrows heavily from European Works Councils Directive;
- The agreement allows for employee participation as well as information and consultation.

# European Company: Substance

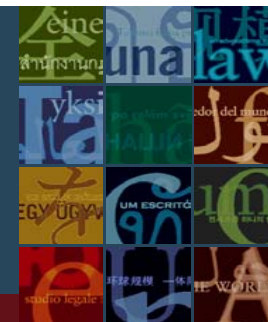


## EUROPEAN COMPANY DIRECTIVE

### THE SUBSTANCE

### EMPLOYEE INVOLVEMENT IN THE EUROPEAN COMPANY

# European Company: Implementation



## Post Nice - Key Dates in the legislative process:

- 8 October 2001 - SE Directive entered into force.
- 8 October 2004 - Implementation date for SE Directive.

# European Company: Aims



## Aim of Directive

- Preserve existing participation rights (*Avant – apres system*)
- Not the imposition of participation where not previously existed

# European Company: Definitions



## Employee Involvement

## Three Definitions

# European Company: Definitions



## Employee Involvement – Three Definitions.

- Information
- Consultation
- Participation

# European Company: Definitions



## INFORMATION (Article 2(i))

Informing the body employees' representatives by competent organ of the SE on questions which concern the SE itself at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE.

# European Company: Definitions



## CONSULTATION (Article 2(j))

**Establishment of dialogue and exchange of views** between employee representative body / employee representatives and the SE' competent organ, at a time, in a manner and with a content which allows employee representatives, on the basis of the information provided, **to express an opinion on the measures envisaged which may be taken into account in the SE's decision-making process.**

# European Company: Definitions



## Note:

Consultation and information provisions in the Directive are in addition to the domestic provisions applicable to those employees in the Member State.

From March 2005 the Information and Consultation Directive will be applicable in all Member States.



# European Company: Definitions



## PARTICIPATION (Article 2 (k))

Definition is intended to embrace the various forms of participation that exist in the EU and the differences between them, including

- The German and Dutch two tier board models, and
- The Swedish single tier board model

(UK employees have no legal right to board membership).

# European Company: Essential Provisions



## Essential provisions on employee participation

# European Company: Essential Provisions



## Essential provisions on employee participation

- No participation in management of SE where none existed in founding companies.
- Existing levels of participation will continue in SE's formed by transformation (conversion from a Plc).

# European Company: Summary



## Special provisions relating to a reduction in participation rights:

Where SE is created:

- (i) By mergers where participation arrangements covered at least 25% (total employees).
- (ii) By creation of holding / subsidiary companies where participation arrangements covered at least 50% (total employees).

Participation rights may be reduced but only with the approval of 2/3 Special Negotiation Body representing 2/3 majority of employees in at least two Member States ('special majority').

# European Company: Negotiation



## Overarching principle is Negotiation

### Between

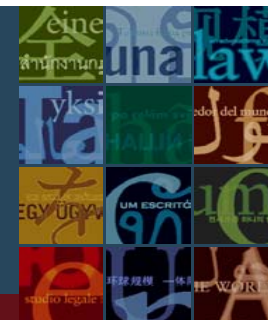
- Employee representative body in SE negotiations - 'the Special Negotiation Body' (SNB), and
- Competent organ of the participating company

# European Company: Negotiation



- Once the participating companies have drawn up a plan for SE establishment employee representatives should be informed of all necessary details to allow them to prepare for negotiations concerning arrangements for the involvement of employees.

# European Company: Special Negotiation Body



- Conduct of negotiations will be through the creation of a Special Negotiating Body ('SNB').
- Purpose: The SNB shall determine arrangements for the involvement of employees within the SE with the competent organs of the participating companies.
- SNB established in accordance with specified geographical and proportional criteria (Article 3(2)).
  - One seat per Member State per each 10% (or fraction thereof) of the total workforce of the participating companies,
  - Minimum of 10 SNB members implied in the SE Directive.

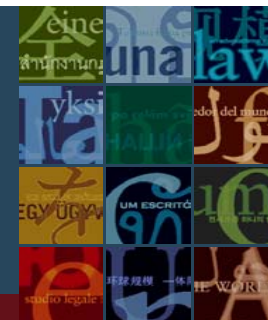
# European Company: Special Negotiation Body



## Voting

In general, decisions will be taken by way of an absolute (simple) majority of SNB members.

# European Company: Special Negotiation Body



## Exceptions to the general rule:

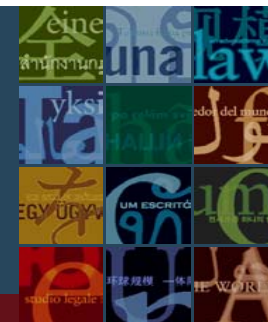
- Special majority voting (2/3 of majority representing 2/3 of employees from at least two Member States).
  1. Where results of negotiations would lead to a reduction in participation arrangements.
  2. SNB decision to terminate or not to open negotiations; instead national rules on employee information and consultation will apply (from March 2005 the Information and Consultation Directive will be applicable in all Member States).

# European Company: The Agreement



## Content of the Agreement

# European Company: The Agreement



## Content of the Agreement (Article 4)

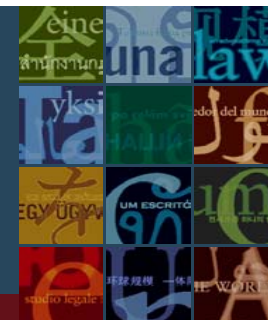
- Scope of agreement.
- Composition of representative body which will be future negotiation partner of SE.
  - Composition
  - Number of members
  - Allocation of seats
- The functions and procedure for the information and consultation of the representative body.
- Agreed SE participation arrangements.

# European Company: Standard Rules



## The Standard Rules

# European Company: Standard Rules



## The Standard Rules (Annex)

A standard set of rules may apply where a negotiated agreement cannot be reached within six months (extendable by agreement to twelve months).

Standard rules seek to ensure employee participation only at the level and to the extent that previously existed in the companies seeking to register as an SE, to the highest level of of participation.

# European Company: Standard Rules

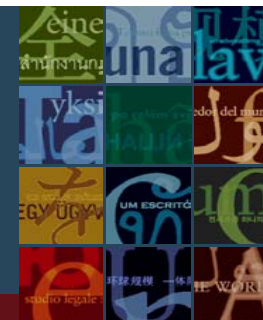


Application of the Standard Rules where no agreement is reached between the negotiating parties, and

1. Participating companies still wish to register SE;
2. SNB has not terminated or refused to open negotiations;
3. One of the companies involved in the formation of the SE was previously subject to participation rules.\*

(\*See page six of accompanying memo).

# European Company: Standard Rules



## Application of Standard Rules to creation of an SE

### Conversions:

- Where participation rights already exists.

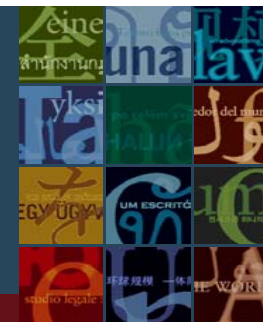
### Mergers: (subject to the Nice Compromise)

- Where participation already existed, extending to at least 25% of employees; or
- Where participation already existed, extending to less than 25% of employees and if the SNB makes a decision on this subject.

### Holding / Subsidiary:

- Where participation right already existed, extending to at least 50% of employees;
- Where a participation right already existed, covering less than 50% of the employees and if the SNB makes a decision on this subject.

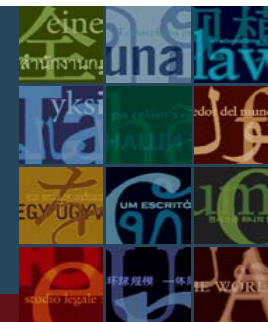
# European Company: Standard Rules



## Annex - Part 1 – Employee Representative Body

- Composition: Rules for the representative body are similar to the those applying to the EWC.
- Membership: Reflects that of the SNB.
- Possibility to reopen negotiations for another agreement after four years, otherwise the standard rules will continue to apply (Clause (g)).

# European Company: Standard Rules



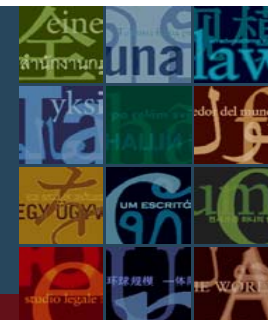
## Annex – Part 2 – Information and Consultation

Rules on provision of information and consultation similar to but more extensive than EWC.

Requirement of regular reporting to representative body inc:

- Company structure and financial situation;
- Development of business, production and sales;
- Employment trends, management changes, closures, layoffs;
- Investments, mergers and divestments.

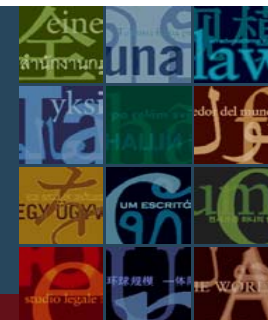
# European Company: Standard Rules



## Annex – Part 3 - Employee Participation

- Transformations: Previous participation rules will continue to apply.
- Where there has been previous participation, participation in the SE will continue to the highest level in force.
- Where no previous participation there will be no right of employee participation in the SE.

# European Company: Employee Participation



## Summary of Negotiation Steps that might lead to participation

### Stage One: Possible recourse to the zero option (= EWC only).

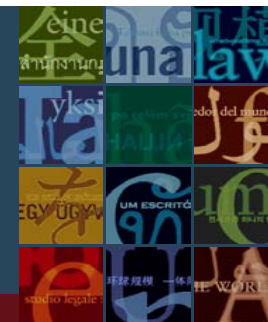
- 2/3 of the votes of the SNB;
- Representing at least 2/3 of the workers;
- Decision: not to start or to cancel negotiations.

### Stage Two: Agreement under terms the Article 4 SE Directive.

### Stage Three: Application of standard rules.

- No agreement between the parties and passing of fixed deadline;
- Participating companies want to continue registering SE;
- No SNB cancelling of negotiations (2/3 – 2/3 majority).

# European Company: Applicable Law

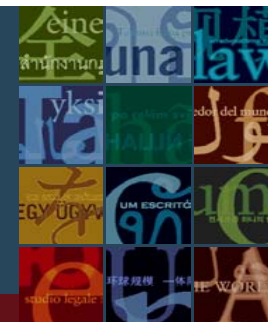


## Applicable Law - General Rule:

Law where SE is / will be registered is applicable to

- (i) Process by which employee involvement arrangements are set up, and
- (i) Ongoing requirements of employee involvement once SE registered.

# European Company: Applicable Law



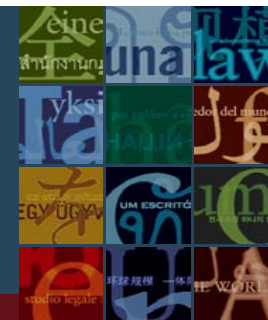
## Applicable Law – Exceptions to the General Rule:

Applicable law to:

- Process by which SNB members are appointed, and
- Protection for employee representatives,

Law of the State in which employees or their representatives are situated.

# European Company: Implementation (state of play)



- Member States are required to implement by 8 October 2004.
- Currently no list of national implementation measures are available from the Commission (but see [www.seeurope-network.org](http://www.seeurope-network.org) for useful information).
- UK implementation measure:
  - The European Public Limited-Liability Company Regulations 2004.

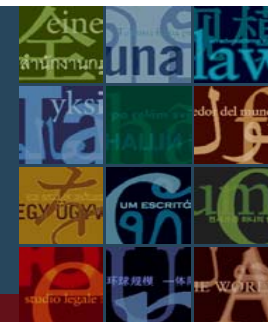
# European Company: The Future?



## The European Company

### The Future of Employee Participation in the EU?

# European Company: The Future?



## The European Company

### The Future of Employee Participation in the EU?

Deterrent effect of entering into negotiations with the SNB?

- Long negotiation period (6/12 months);
- Cost implications for the participating companies of forming the SNB and continuing negotiations with the SNB (including paying for the SNB expert);
- Lack of legal certainty due to too many references to national law in the SE Directive.

# European Company: The Future?



Standard rules could lead to ‘*a form of co-determination alien to the majority of member states*’ (UNICE – 8 of EU15)

Employee participation - an alarming idea for management?

- Doubts about the financial literacy /adequacy of employee representatives?
- Participation slows down decision-making?
- Participation makes for inefficient decision-making?

# European Company: The Future?



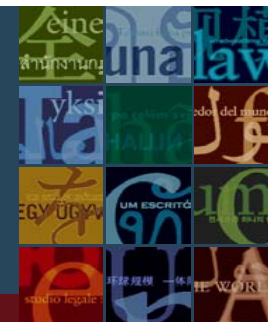
## **Maintenance of the status quo or increase in participation?**

SE has the possibility of artificially distorting merger decisions.  
Companies may look to countries with comparable participation regimes.

Or

Possibility of increased employee participation through arrangement or  
by stealth through the application of the standard rules.

# European Company: The Future?



## **SE Directive is not totally comprehensive**

Directive does not deal with significant changes in the composition of the SE after it has been registered, even where these changes may have implications for employee involvement.

For example: No mandatory employee participation in SE when an SE acquires, merges, disposes parts of its business, imposes large scale redundancies, moves registered office to another Member State or changes its legal form back to a Plc.

## European Company: Conclusions



The first European Company will be formed in 2004,

The Nordea Group (Dk, Fin, Nor, Swe.) is the first company which has officially started a process to transform itself into an SE.

We wait to see whether it is the future, it is still an the unknown quantity.

## European Company: Further information



Useful website for further information:

<http://www.seeurope-network.org/homepages/seeurope/europeancompany.html>

[nbridgland@whitecase.com](mailto:nbridgland@whitecase.com)