

What is a Societas Europaea? Why are “European Companies” being established?

Outline

- History
- Formation of SEs
- "Conversion"
- One-Tier vs. Two-Tier Management
- Negotiation Process / Translation Issues

Outline (2)

- Employee Representation
- European Trade Union Organizations
- SE Works Council
- SE Supervisory Board
- Resources

History (1)

- 1970s: EU introduced the obligation to “inform and consult” employees or their representatives regarding “collective redundancies” and “transfers of undertakings”
- 1994: Council Directive stipulating the establishment of a European Works Council

History (2)

- European Company Directive 2001/86/EC adopted the „before and after“ principle of employee participation when establishing an SE
- With this Directive, employee board-level participation was recognized for the first time in European legislation.

History (3)

- Article 14 of the Directive on Cross-Border Mergers (2005/56/EC) laid down the rules of corporate governance for legal entities resulting from mergers of companies established in more than one member state of the EU.

History (4)

- Finally, the European Company Statute stipulated that the registered office of an SE must be in the same member state where the head office (principal place of business) is located, but once it has been established, it may be transferred to another member state.

Why are SEs established?

- Simplify doing business within the European Union
- Ease tax complexities
- Ensure efficient management structures
- Facilitate cross-border mergers

Why (2)

- In Germany: It seems that one reason is to avoid having to expand employee participation rights;
- “Before and after” principle

How are SEs formed?

- Merger:
- Holding:
- Subsidiary:
- Conversion:

Conversions

- Process:
- Management drafts/submits a report that
 - explains and justifies the legal and economic aspects, and
 - indicates the implications for the shareholders and employees

Conversions (2)

- Negotiations with employee representatives regarding employee involvement in the SE (6 months)
- Publication of the terms of conversion
- Agreement on employee involvement
- General meeting agrees to conversion*
- Registration as an SE

Issues in Germany

- Two-tier system of management
- Scope of agreement (EU, EEA, others)
- Co-determination
- Employee representatives want more than the “standard rules” (“gesetzliche Auffanglösung”)

Issues in Germany (2)

- Financial and material resources to represent employees effectively, particularly in countries w/o employee representation
- Translation/Interpreting
- Confidentiality

SE Works Council

- Composition, number of members
- Allocation of seats
- Geschäftsführender Ausschuss
- Frequency/venue of meetings
- Financial and material resources

SE Supervisory Board

- Key Issues:
- Size of the Supervisory Board
- Parity
- Employee Representation on Committees
- Translation/Interpreting

Resources (1)

- Council Directive Council Directive 94/45/EC
- European Company Statute (SE)
- SE-Beteiligungsgesetz

Resources (2)

- www.seeurope-network.org
- European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS)
- www.etui-rehs.org
- ec.europa.eu/employment_social/labour_law//9445

Resources (3)

- www.boeckler.de – for publication on “Mitbestimmung” Int. Ed. 2002

BDÜ Conference in Germany

- September 11-13, 2009 in Berlin at the Freie Universität Berlin

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Thanks for listening!

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German SEs (Partial List)

- Allianz
- BASF
- Deutsche Telekom
- Fresenius
- MAN
- Strabag (Austria)

Backup: Mini-Glossary (1)

Aufsichtsrat

Arbeitnehmerbeteiligung

Auffanglösung (gesetzliche)

Besonderes Verhandlungsgremium

Betriebsverfassungsgesetz

Betriebsrat

Doppelte Mehrheit

Europäischer Gewerkschaftsbund (EGB)

Freistellung (BR-Mitglieder)

Backup: Mini-Glossary (2)

Geltungsbereich

Geschäftsführender Ausschuss

Initiativrechte *

Innere Ordnung

Massenentlassungen

Mitbestimmung

Vertraulichkeit

Vorstand

Zustimmungspflichtige Geschäfte