Studies on the implementation of Labour Law Directives in the enlarged European Union

Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees

SYNTHESIS REPORT

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Content

Introduction

1. Notion of cooperative at national level

A. General considerations

The concept of a cooperative is not treated univocally within the EU; the economic relevance or social credit of cooperativism is not homogeneous, and neither is the legal planning of cooperative companies. As regards the first aspect, in some EU Member States (Germany, Italy or Spain), cooperatives occupy a characteristic and differentiated sector of the economy of growing importance, which enjoys deep social rooting and economic presence. On the other hand, in other countries, the activity of cooperative companies is residual. In the States in the enlarging EU area, the conception of a cooperative has historically been linked to the existence of a planned market economy in which it had its own formal and quantitative importance as a way of socialising production.

In general, European legislation considers cooperatives to be companies, subject at times to an individual system. The field chosen to regulate them is mainly company law, whereby, in general, the rules of company law or commercial law are applied to cooperatives. In some legal systems (Hungary, Poland, Spain or Sweden), cooperatives have their own legislation. In the Netherlands, cooperatives are classed as civil associations. And in some legal systems, cooperative common law coexists with individual law, which is applicable to certain cooperative modalities (agricultural, housing, credit or health). In the Nordic countries, the common codetermination that is applied in company decision-making processes has had an effect on the definition of the cooperative. In Sweden, it is not unusual for them to be constituted as economic associations; however, they can also be formed as limited liability companies.

B. Analytical comments

Austria.- A cooperative is an association of an open number of members, with the objective of promotion of the acquisitions and the economy of its members.

Belgium.- The co-operative is a commercial society.

Cyprus.- It may be registered as a cooperative any company that has as its purpose the promotion of the economic interests of its members in accordance with cooperative principles, or a company incorporated for the purposes of facilitating the operation of such companies. The concept of a cooperative credit institution is defined as a registered company that has as its main activity the acceptance of deposits and other returnable capital from the public, the supply of credit from the same account or the provision of services of electronic money.

Czech Republic.- Under the Business Code a cooperative is a society established for the purpose of business or providing for the economic, social or other needs of its members. A cooperative must have at least five members, this provision ceasing to apply if at least two legal entities are members. Every cooperative is a legal entity, all assets of which are liable for any breach of obligations. At the same time, however, members of a cooperative are not generally responsible for its obligations.

Denmark.- There is practically no legislation on cooperatives. The Act on certain undertakings engaged in commerce or industry contains a definition of a cooperative. It is an undertaking the purpose of which is to further the joint interests of the participants through their participation as customers, producers, or in other similar ways, and where the result is divided between the participants in proportion to their share of the undertaking's turnover. The main content of this Act is to put a duty on undertakings with limited responsibility towards creditors to register in a public registry.

Estonia.- A legal entity of the same type in national law is regulated by the Commercial Associations Act , according to which is a company with the purpose to support and promote the economic interests of its members through joint economic activity in which the members participate: 1) as consumers or users of other benefits; 2) as suppliers; 3) through the use of services; 4) through work contribution or 5) in any other similar manner. The provisions concerning companies apply to associations, unless otherwise provided for the legislation.

Finland.- The purpose of a co-operative shall be to promote the economic and business interests of its members by way of the pursuit of economic activity where the members make use of the services provided by the co-operative or services that the co-operative arranges through a subsidiary or otherwise. It may be stipulated in the rules of the co-operative that its main purpose is the common achievement of an ideological goal.

Germany.- The specific legal status of cooperatives is exclusively authorised for certain activities listed by Law on Cooperatives (GenG). The co-operative are societies with a variable number of members, with the purpose of promoting their members' activities in trade or industry or their social and cultural matters by means of commonly owned enterprise (cooperative societies) acquire the right of a "registered cooperative society" according to this Act. These are associations dealing with credit, commodities, the sale in common of agricultural or industrial equipment, the production of goods and their sale through cooperative schemes and the construction of apartments. The minimum number of members is three. Cooperative societies are considered to be merchants within the meaning of the German Commercial Code ("*Handelsgesetzbuch*") .

Hungary.- The cooperative is an organisation with legal entity which is established with the members' share-note equity predetermined by the founding document and operating according the principles of open membership and variable capital; the objective of the organisation is to promote meeting the economic and other societal (cultural, educational, social and health care) needs of the members.". Basically the Hungarian legislation sets rules and procedures for establishment, registration, organisation, operation, transformation, etc. similar to the economic associations (companies), with one significant exception: the decision-making procedure is based on the "one member – one vote" principle regardless to the equity ratios across the members. Concerning property and personal relations not regulated by this law the Civil Code serves as background legislation.

Ireland.- Under Irish law, it is possible for co-operatives to be formed by any group of seven or more people over 18 years of age and to register with the Register of Friendly Societies under the Industrial and Provident Society Acts, 1893 to 1978. When registered a co-operative is incorporated and is entitled to limited liability like any private limited company.

Italy.- The cooperatives are society with variable capital with mutualistic scope (article 2511 C.C.), which consists in the finalization of the society activity to the members' needs described by the Italian specialized literature as "management to service".

Latvia.- Cooperative society is a voluntary association of individuals or legal entities with an aim to provide services in order to increase effectiveness of the economic activity of its members.

Lithuania.- Cooperative society is a economic entity for the purpose of satisfying economic, social and cultural needs of its members

Malta.- Malta has a special law, the dedicated to cooperatives distinct both from civil Code and Companies Act. According to the Cooperatives Society Act 2001, once registered, cooperatives are corporate bodies having limited liability and a separate and distinct legal personality from that of its members. Unless the cooperative's statute provides otherwise, all members have one vote. At the end of each accounting period, profit is to be distributed among the members after the transfer of at least 20% to a reserve fund, to be used exclusively to cover any losses incurred by the society. Furthermore every cooperative is bound to contribute 5 % of its profits to a Central Cooperative Fund which is used for the furtherance of cooperative education, training and research, and for the general development of the cooperative movement.

Netherlands.- Co-operative societies are covered by the Civil code, as a subspecies of the association. The definition of co-operative in Dutch law is: "A cooperative is an association established as a cooperative by notarial deed. Under its articles its object must be to provide for certain material needs of its members under agreements, other than insurance agreements, concluded with them in the business it conducts or causes to be conducted to that end for the benefit of its members"..

Poland.- The cooperative society is a voluntary association with non-limited number of members, changeable personal structure and share capital, carrying on the business activity for the purpose of its members (art. 1 paragraph 1 of the Cooperative Law Act 1982). The cooperative society may run the social and educational-cultural activity for the benefit of its members and their environment. Besides the general provisions, the Act contains special provisions concerning specific forms such as farm cooperative society, cooperative society of agricultural set and labour cooperative society.

Portugal.- Cooperatives are autonomous, freely incorporated corporate bodies, with variable capital and composition. These non-profit-making cooperatives, by means of cooperation and mutual aid by their members, and in compliance with the principles of cooperation, aim to meet their members' economic, social or cultural needs and aspirations (article 2 of the Cooperative Code).

Slovakia.- Cooperatives are considered to be a legal entity and defined as: "A community of unclosed number of natural persons (at least five) and/or legal entities (at least two) established for the purposes of entrepreneurial activities or procurement of economic, social or other needs of its members" (article 221 (1) of the Commercial Code).

Specific types of cooperatives are but not only (i) agricultural (performing especially entrepreneurial activities and seeking profit), (ii) housing (as communities of owners of

particular flats in blocks of flats established with aim to jointly administrate the building/block of flats and its surrounding, without aim to gain financial profit) and (iii) producing cooperatives of disabled persons (established for entrepreneurial activities, but mainly for procurement of social and economy needs of its members).

Slovenia.- An organisation of undefined number of members which purpose is to enhance economic benefits of its members. It is based on voluntary entrance and exit, equal cooperation and management of members.

Spain.- The current state law regarding Cooperative societies is Law 27/1999 of 16th July, which has been the object of later, partial amendments. On the other hand, most of the Autonomous Communities have their own legislation on cooperative societies. In general, the minimum number of members required to establish a first-order cooperative society is three; two, if it is a second-order cooperative society (art. 8 Law 27/1999).

Sweden.- The legal form of the cooperative can vary. The most common form is economic association, since it is the form best suited for democratic codetermination. However, a cooperative can also be started as a limited company. Both company forms have its specific regulation (Economic association Act <1987> and the Companies Act <1975>). However both forms are legal persons, hence the members/owners are not liable with their personal assets.

United Kingdom.- There is not specific legislation relating to cooperatives – businesses that are owned and democratically controlled by their members –. Cooperatives may set up as companies limited by guarantee, limited liability partnerships or more commonly as an Industrial and Provident Society under the Industrial and Provident Societies Act 1965.

2. Specifities in the regulation of employment relationship, employee and participation within the national context of cooperatives

1. Before analysing the transposition of the contents of Directive 2003/72/EC, it is advisable to make some common considerations on the general framework of national legislation on cooperatives as regards the employment status of the workers, regardless of whether they are members of the cooperative or not. The matter in hand is to determine whether these workers are regulated differently way in both individual and collective law. In other words, whether these workers are subject to any specifities in their contractual relationship that are different to those of all other wage-earners in the private sector or, on the other hand, they are governed by the same rules as the other workers subject to national Labour Law.

   Globally speaking, European Law maintains a situation of convergence: no differences can be observed between the legal-labour system of workers in cooperative companies and those in all other companies. And differences cannot be detected in the most relevant aspects of individual relations (working day, salaries, contractual modalities or termination of contract) or in the articulation of representation rights, including the right to join a trade union.

2. A little more variety, but not too much, is offered by the regulation of working relations of members who are also workers of the cooperative. In some cases, the national

regulatory solutions differentiate their handling from the ordinary labour system, including it within the sphere of civil or trade law. In general, the details can be found in some specific modalities of cooperatives.

So, in **Hungary**, employee representatives have the same right (e.g. information, consultation and codetermination) as their counterparts in other business organisations (companies). The only notable difference is the board-level representation; contrary to the company law, the cooperative law does not provide employee representation in the Supervisory Board even if the number of employees exceeds 200. In Netherlands we can find also a slight difference in participation rights. In large companies, the Works council has the right to nominate members of the supervisory body (SB) and enhanced right to nominate a maximum of one third of the members of the SB. In large cooperatives (same criteria), the Works council has the right to nominate and the right to oppose the appointment of SB-members.

In **Slovakia**, the same rules on the employees' representation (as apply in respect to other employees) apply also to employees of the cooperatives and their representation. The only exception is the cooperative where membership is conditioned by the employment with the cooperative – in such case the representative body is neither trade union nor work council, but special body of the cooperative elected by the general (members') meeting of the cooperative's members. This special body is governed by the general rules applicable to other employees' representative bodies active in Slovakia (trade union, work councils) with specification applicable to it pursuant to the decision of the general (members') meeting of the respective cooperative.

In **Slovenia**, the Cooperatives Act does not contain any provision on employee participation in cooperatives. In this regard the Workers Participation in Management Act (ZSDU) applies also to cooperatives. In theory and practice there has been some dispute on compatibility between the ZSDU and the Cooperatives Act as regards the workers participation in the supervisory board. The former namely states that workers may have their representatives in the supervisory board, whereas the latter states that only elected member of the cooperative, its legal representative or a natural person, contractually related to the legal person being a member of a cooperative, may be members of the supervisory board (Art 26 of the Cooperatives Act). On the basis of a teleological interpretation of the ZSDU there is now an agreement among legal commentators that the ZSDU regulates workers participation in management on the basis of employment relationship and not on the basis of membership, even though the linguistic interpretation shows differently.

1. Formal aspects

A. General considerations

1. On 1st April 2007, most of the EU-25 countries had transposed Directive 2003/72/EC, of nd July, into their national laws, thus completing the Statute of the European cooperative society with regard to the involvement of workers (hereinafter, SCE-Directive). Specifically, the countries that had not transposed the Community regulation on this date were the following five: France, Greece, Luxemburg, Ireland and Portugal. Nonetheless, the situation of Portugal and Ireland differs from the others, where the transposition process had not been started, at least from a formal perspective; in Portugal, the *Boletim*

do Trábalho e Emprego of 16th January 2006 published a draft Decree Law for the transposition of the SCE-Directive, opening a thirty-day discussion process. In Ireland, the trasposition has been adopted in June 2007. All the references to Portuguese and the Irish laws of transposition in this report must be understood to the draft.

National regulations that have transposed the Community regulation offer a significant diversity in the following three aspects: a) the technique used for transposition, b) intervention of social partners and other consultative social groups or institutions in the procedure to prepare the draft law, and c) lastly, the date of entry into force of the transposition regulation.

a) To start with, the technique used most generally for transposition has been passing a legal regulation dictated by the corresponding authority in each Member State. Generally, this regulation has taken on the form of law, developed at times by means of regulations. In some countries, however, the transposition regulation has taken on other legal modalities, such as Legislative Decree (Italy), *Legal Notice* (Malta) or Statutory Instrument (United Kingdom). The only exception to the general rule of transposing the regulation by means of a state regulation can be found in Belgium. Transposition in this country has been undertaken by means of a collective agreement at State level. However and pursuant the practice in this country, a Roya Decree has given legally binding to the collective agreement. In Italy, the transposition by the the Legislative Decree has been adopted on the basis of an *avviso commune* of the social partners.

   Neither has there been unanimity with regard to the decision to dictate one or two provisions to regulate, in a unified or separate manner, the right to involvement of employees in the SCE-Directive and in the Statute of the European Cooperative itself (Regulation 1435/2003/EC). The solutions adopted do not respond to a single model. On the one hand – the minority model -, the transposition in Germany, Hungary, Poland and Slovakia was undertaken in a unified form. However, in other countries – and this is the model followed by the majority – the transposition of both Community norms, Directive and Regulation, was articulated by separate legislative instruments. The transposition regulations of Austria, Cyprus, Czech Republic, Denmark, Italy, Latvia, Lithuania, Malta, Netherlands, Slovenia, Sweden and United Kingdom follow this latter model. We must also add that, in some countries (Estonia or Finland), transposition of the SCE-Directive has been undertaken by means of a law amending the national law that had formerly transposed Directive 2001/86/EC (SE-Directive), whereby the Statute of a European Company is completed regarding the involvement of employees (hereinafter, SE-Directive). And even in other country (Spain), both Directive, SCE and the SE, have been transposed into a single regulation body.

b) In practically all countries, the transposition of Directive 2003/72/EC was preceded by consultation of the social partners, in most cases of a formal nature, even though in some cases this has been undertaken under a general consultation of the stakeholders (United Kingdom) or, in another, transposition has been adopted on the basis of a common opinion was signed between the social partners (Italy). Netherlands, Spain and Latvia constitute the exception to this

rule. In the first of these, Netherlands, the omission of consultation with the Social and Economic Council, apparently, was due to the transposition of the SCE-Directive following the transposition of the SE-Directive "very closely" and the latter had undergone the required consultation. In Spain, the absence of consultation with the Social and Economic Council may be explained due to the fact that the transposition of the SCE-Directive took place at an advanced stage of the Parliamentary discussion of the draft law that, originally, was to transpose only the SE-Directive. In Latvia, finally, it seems that the absence of consultation with the Tripartite Council of the Republic was due to a delay in meeting to deadline of transposition.

Consultation procedures have been carried out pursuant to the legislation regulating this issue in each country. Nonetheless, this diversity may be grouped into two main models. In the first model, there are two different stages to consultation, even when in some cases the same organisations participate at both stages (this model is illustrated in exemplary fashion by Cyprus and Latvia). The first stage corresponds to the preparation of a draft law, and is articulated through a direct negotiation between the Ministry in charge of social issues (Ministry of Labour, Ministry of Employment or Ministry of Social Affairs, for instance), on the one hand, and representative trade union and employers' confederations, on the other. At the second stage, the transposition draft law is subject to formal consultation with certain bodies (Social and Economic Council or Tripartite Council). In the second model, the intervention of social partners is articulated exclusively in a single stage, either informally by means of starting tripartite consultations and negotiations (this is the case of Finland or Estonia), or formally by submitting the draft law to the consultative body or bodies specialised in social and labour issues (Lithuania or Malta).

c) Art. 16.1 Directive 2003/72/EC mandates Members States either to adopt the legal, regulation and administrative provisions necessary to comply with its own regulations "no later than 18th August 2006", or, given the case, to guarantee, no later than this date, that "management and labour introduce the required provisions by way of agreement".

Most Member States that have transposed the SCE-Directive have done so in the terms established by the Community regulation. This has been the case for the following eleven countries: Austria, Czech Republic, Denmark, Finland, Germany, Hungary, Netherlands, Poland, Slovenia, Sweden and United Kingdom. Transposition in the remaining Member States has not followed a common pattern, and delays may be grouped into two levels. On the one hand, a minimum level of delay, not longer than four months (Cyprus, Latvia, Lithuania and Spain). On the other, a medium level of delay, with delays exceeding this time period (Belgium, Estonia, Italy, Malta and Slovakia).

2. As mentioned earlier, certain legislations have articulated the transposition of the SCE-Directive by means of a law amending the transposition law of the SE-Directive. From a quantitative perspective, this legal technique has only been undertaken in the minority, with the majority option being the legal policy of incorporating both Community regulations in different legal bodies.

This is, however, a difference that is more perceptible from a formal perspective than from a material or content dimension. This is so inasmuch as the legal scheme of the right to involvement of employees in both modalities of European company formulated in each of the Directives, SE-Directive and SCE-Directive, are very similar in their legal contents. Without entering into an examination of these contents at this point, a simple comparison of Directive 2003/72/EC and Directive 2001/86/EC shows the likeness of the articles in both Directives. With the exception of arts. 8 and 9, and apart from logical semantic differences derived from the different object of regulations in each (company and cooperative society), the coincidence of the remaining articles in both Directives – that is, in the majority of the legal scheme – is nearly total and unreserved.

Given that this is the case, we should not be surprised by the significant similarities existing between the national transposition laws for both Directives. This leads to the technique used, most probably for legislative economy reasons, by some legislations on transposing Directive 2003/72/EC, by which reference is made from one regulation to the other, or a *per remisionem* regulation, and are limited to developing the singularities of this Directive with respect of Directive 2001/86/EC, establishing that the provisions stated by the corresponding transposition law of the latter will be applicable for the remainder. The examples of Austria and Spain, though different between them, illustrate this form of legislation in exemplary fashion.

B. Analytical comments

Austria.- The transposition of SCE-Directive was primarily carried out by amending the Labour Constitution Act (*Arbeitsverfassungsgesetz* – ArbVG). The Federal Act BGBl I 104/2006 introduced a new section VII to the ArbVG, providing special regulations for the involvement of employees in an SCE. Due to their objective coherence, a few regulations transposing this directive were included in the Labour and Social Security Courts Act (*Arbeits- und Sozialgerichtsgesetz* – ASGG) and in the Post Labour Constitution Act (*Post-Betriebsverfassungsgesetz* – PBVG). Article ArbVG limits the scope of part VII of the ArbVG to companies of any kind except agricultural companies, authorities and offices, public teaching and education establishments and private households. This limitation results from the distribution of legislative competences between the Federation on one hand and the provinces (*Länder*) on the other hand. An amendment to the Agricultural Labour Act (*Landarbeitsgesetz* – LAG) introduced regulations applicable for companies of agriculture and forestry that by and large correspond to the provisions of the ArbVG dealing with the involvement of employees in an SCE. Concerning the other companies excluded from the scope of the ArbVG, the Austrian legislators could desist from a specific transposition, because the companies mentioned do not have all the qualities to found an SCE anyway.

The amendments necessary to comply with SCE-Directive became effective on 18th August 2006.

Cyprus.- Directive 2003/72/EC was implemented in Cyprus by *Law 160(I)/2006, the 'Law supplementing the Statute for the European Cooperative Company with regard to the involvement of employees'* with its enactment and publication on the 15/12/2006; thereby surpassing the compulsory transposition period by 4 months.

Prior to the enactment of *Law 160(I)/2006*, a consultation process took place involving representatives of the main trade unions, the employer's associations and representatives of the government. This group examined the provisions of the Directive and the draft

legislation proposed by the government for its transposition into national law. A general consensus in favour of the implementation of the Directive and the adoption of the draft legislation existed amongst the social partners, and there were no contentious issues at stake that caused any diversity or debate.

Czech Republic.- Act No. 307/2006 has implemented the Council Regulation 2003/1435 that establishes the European Cooperative Society. On the other hand, Act No. 308/2006 amending some laws due to the adoption of the law on European Cooperative Society; almost others; Labour Code, Code of Civil Procedure and Business Code, concerning cooperatives. In regard of the Business Code, Law 308/2006 solves outstanding interpretation problems and rules on whom, and under what conditions, shall exercise the rights and obligations of a legal entity if that is a member of the elected body of a cooperative. At the same time it further specifies the provision concerning the merger of cooperatives so as to correct the situation when the merger or division of a cooperative could be endorsed and entered in the Commercial register without communicating this to creditors, debtors and employees of the cooperative concerned; and the cooperatives where a meeting of delegates substitutes for the general meeting of members, and without communicating this to the prevailing number of the members unless these can resist to or comment on such situation. Both Laws, 307 and 308, entered into force on 18 August 2006, in compliance with the EU deadline for harmonizing national law with a*cquis communautaire.*

The process of creating a law on the European cooperative society was joined by all social partners in the Czech Republic; i.e. representatives of employers, employees and the State. No outstanding disputes between individual actors occurred during the process and the bill was drafted within a relatively short period of time.

Denmark.- SCE-Directive is implemented in Denmark by Act no 241 of 27 of March 2006, which came into force 18 August 2006; i.e., at the date prescribed in the Directive. The Act was prepared by the Ministry of Employment. The labour market organisations were consulted.

The Act on SCE differs like the Act on SE from the usual pattern by not being subsidiary to collective agreements. This is due to the fact that board level representation of the employees in Denmark usually is treated as a company law issue which is not governed by collective agreement.

Estonia.- Estonia has implemented the Council Regulation (EC) No 1435/2003 by Act of 14 December 2005 (*Euroopa ühistu (SCE) põhikirja kohta" rakendamise seadus,)* which entered into force on 18 August 2006. However, the harmonisation process concerning SCE was completed after. The act transposing the Directive into Estonian legal system was adopted on 14 February 2007. The Act was proclaimed by the President of the Republic and officially published on March.

The draft Act has passed the coordination process with different ministries and social partners, which have not made comments. Also, the draft Act was forwarded to the Estonian Chamber of Commerce and Industry, who presented minor proposals.

Finland.- The SCE-Directive has been implemented by Law 2006/663, on 26 July, modifying the Act on Employee Involvement in European Companies (SE) (Law 2004/758).

The proposal of the Government was delivered to the Parliamentary Committee on working life and equality issues. The committee gave its Memorandum and agreed, unanimously, that no changes have to be made to original governmental proposal. The law was discussed by the Parliament and, once signed by the President of Republic, came into force 18 August 2006.

The process of transposition was made by so called tripartite mode, which means that all the central social agents have been consulted. This means, also, that the decision concerning the form of the implementation measure was negotiated thoroughly in a tripartite committee, and if disagreement would exist, the dissenting opinions are documented in the memorandum of the committees.

Germany.- The Council Regulation 1435/2003 and the associated Directive on employee involvement in European Cooperative Companies have been transposed into German Law. On 27 January 2006, the ministry of Justice published a bill for the transposition of the Regulation and the Directive. The bill was adopted in the Bundestag and the Bundesrat and published in the Federal Law Gazette on 17 August 2006 to come into force one day later. The transposition is part of the *Gesetz zur Einführung der Europäischen Genossenschaft und zur Änderung des Genossenschaftsgesetzes* (German Law on Implementation the European Cooperative Society and on the Modification of the Cooperative Societies Act) and contains, among others, two pieces of legislation: the SCE-*Ausführungsgesetz* SCEAG (Act on implementation of the SCE) and the SCE-*Beteiligungsgesetz* SCEBG (Act on the participation of employees in the SCE). There was no public discussion in relation to the legislative process; the discussions in parliament were brief and without substantial disagreements.

Hungary.- Hungary transposed Council Regulation (EC) No. 1435/2003 Council Directive 2003/72/EC by means of Act LXIX of 2006 passing by the Parliament on 24th June 2006. The Act came into effect on 18th August 2006, exactly on the date of deadline of the compulsory transposition.

The bill on European Cooperative, prepared by the Ministry of Justice, was not on the agenda of the plenary session of the National Interest Reconciliation Council (*Országos Érdekegyeztető Tanács*, OÉT), the highest tripartite forum of social dialogue. Only an expert level consultation was held in the Economic Committee of OÉT. From the trade union, side only the Confederation of Unions of Professionals (*Értelmiségi Szakszervezeti Tömörülés*) showed up, which basically welcomed the bill and did not make any comment. Of the employers' associations, the National Federation of Consumer Co-operatives (*Általános Fogyasztási Szövetkezetek Országos Szövetsége)* questioned some formal points of the transposition. The government accepted some proposals of the National Association of Entrepreneurs and Employers (*Vállalkozók és Munkáltatók Országos Szövetsége*).

Ireland.- In January, 2007, the Minister of Enterprise, Trade and Employment circulated a draft of the Statutory Instrument (SI) to the social partners, requesting comments by end-January. However, the drafting process was not completed before the dissolution of the

Oireachtas (parliament) in April[1]. Finally, on May 2007 the SCE-Directive was transposed and approved the European Communities Regulations by the Statutory Instruments (S.I) 259/2007

Italy.- SCE-Directive has been implemented in Italian law by the Legislative Decree n. 48/2007. Explaining the procedure used for transposition, it might distinguish three different acts: i) The Italian Parliament disposed by Act n. 62 of 18th April 2005 that the Government should adopt provisions in order to comply with the Directive, applying art. 76 of the Italian Constitution which allows the Parliament to delegate the legislative function to the Government only for a predetermined period of time and for specified objects and after previous determination of principles and criteria; ii) On September 28th 2006, the Social Partners (AGCI, CONFCOOPERATIVE LEGACOOP for the cooperatives associations, and CGIL, CISL, UIL for trade unions) signed a collective agreement, whict functions was aimed at offering to the Governement the common opinion of trade union organisations and employer associations on the implementation of the SE-Directive. Nevertheless, this cannot be considered enough to adopt the SCE-Directive since, because in Italy collective agreements lack of the *erga omnes* effect; iii) The Government issued on 12th April 2007 the Legislative Decree n. 48 of 6th February 2007 on the implementation of the Directive 2003/72 along the lines of the social partenrs´common opinion.

Latvia.- On November 2006, the Parliament of Republic of Latvia adopted the Law on the Involvement of Employees in the European Company Society. This Law came into force on 29 November 2006.

The national level social partners - Employers' Confederation of Latvia (LDDK) and Free Trade Union Confederation of Latvia (LBAS) - were consulted during the preparation of the law transposing the Directive. Prior to submission of the draft law to the Cabinet of Ministers, it was approved by the National Tripartite Co-operation Council.

Lithuania.- On 15 June 2006 the Parliament of the Republic of Lithuania (*Seimas*) adopted the Law on the European Cooperative Societies. The law ensures the application of the Council Regulation (EC) No 1435/2003. This Law has come into effect on 18 August 2006. The transposition of the SCE-Directive follows the example of the Transposition of the SE-Directive and, so, it was prepared a separate bill of law. On December 2006, the Parliament of the Republic of Lithuania (Seimas) adopted the Law no X-935 on Employees Involvement in Decision-Making in European Cooperative Societies (*Lietuvos Respublikos įstatymas dėl darbuotojų dalyvavimo priimant sprendimus Europos kooperatinėse bendrovėse*). The Law came into effect on 28 December 2006.

The draft Law was prepared by the working group of the representatives of the ministries with no participation of social partners. There was no consultation to the tripartite Council of the Republic of Lithuania.

[1] When a Statutory Instrument is signed into law by the relevant Minister, it is placed in the Library of the Parliament (*Oireachtas)* for twenty-one sitting days before it becomes law. During this period any member of either House (*Dáil or Seanad*) can request a debate on the S.I. and propose amendments.

Malta.- The SCE-Directive was transposed into Maltese Law by means of Legal Notice (LN) 48 of March 2007, entitled the Employee Involvement (European Co-operative Society) Regulations 2007.

The draft of LN was sent for consulting to a tripartite board, known as Employment Relations Boards (ERB). Also was consulted to the Malta Board of Cooperatives. Both discuss the draft and sent its comments to the General Attorney.

Netherlands.- The Dutch legislator used the procedure of legislation for the implementation of SCE-Directive, which has been transposed by the Law of the Involvement in European company. The law came into force on 18 Augustus 2006.

The Ministry of Social Affairs didn't consult the Social Economic Council about the transposition process, because the transposition follows the transposition of the Directive of the European company very closely. This means that employer' organizations and trade unions hadn't any influence on this transposition process.

The transposition of the SCE directive is in line with the transposition law of the SE directive. The choice been made in the latter serve as a basis for the implementation of the SCE directive. Both regulations are implemented in the Involvement of Employees (European societies) Act (*Wet rol werknemers bij Europese rechtspersonen).* Chapter 1 of this law contains the provisions regarding the involvement of employees in a European company and chapter 2 the provisions regarding the involvement of employees in the European Cooperative Society.

Poland.- Poland has transposed both, Council Regulation and Council Directive of SCE, in the Act of 22 July 2006 on a European Cooperative Society in a proper term. The Polish Act on SCE came into force on 18 August 2006.

The draft version was the subject of social consultation in accordance with the legal procedure. The trade union and the employer organizations consulted were: *Solidarność*, OPZZ, Trade Unions Forum, Business Centre Club – Employers' Union, Polish Private Employers' Confederation and Consumers' Federation. The draft version was also delivered to organizations concentrating the entities carrying out economic activity, i. e. National Chamber of Commerce and Polish Banks Union. And, moreover, the bill of the Act on SCE was consulted with entities associating the cooperative entities (Domestic Council of Cooperation, Domestic Savings and Loan Cooperative Bank).

Slovakia.- The draft of the Act transposing the SCE-Regulation and SCE- Directive was prepared and approved by the Slovak government and submitted to the parliament on October 2006. The parliament should review and comment on the Act on European Cooperative Society, that was approved the 6 February 2007

This government's draft of the Act was delivered to social partners (Confederation of Trade Unions of the SR/KOZ SR and Federation of Employers' Associations of the SR/AZZZ SR as well as National Union of Employers/RUZ) to comment on it. Social partners submitted none objections against wording of the draft of the Act transposing the Directive to the government. In respect of the Act, there has not been initiated any national debate. It was subject of interest only of government, main social partners active on the national level.

Slovenia.- The transposition of the SCE-Directive has been achieved by a specific legislative instrument: the Participation of Workers in Management of the European Cooperative Society Act (*Zakon o sodelovanju delavcev pri upravljanju evropske zadruge*). The SCE-Law was adopted by the National Assembly of the Republic of Slovenia at its session on July 2006 and enters into force on the fifteenth day after its publication in the Official Gazette: i.e.: on 18 August 2006.

The proposal of the SCE-Act has been prepared by the Ministry for Labour, which performed a consultation with social partners before sending the proposal to the Parliament. The proposal has been dealt with at the Economic and Social Committee, which is the representative body of social partners. The Ministry reports that no debate arose in this regard.

The SCE-Act continues the series of so-called European Acts in the field of workers involvement at decision-making of companies. Accordingly, there is a general Workers Participation at Management Act (ZSDU) in force in Slovenia, which presents the fundamental law in the field of workers' involvement, with primarily nation-wide provisions, while particular fields with supranational application are regulated in specific laws – EWC Act, SE-Act and SCE-Act. Each of the four acts is a "stand-alone" measure with its own principles, objectives and legal logic.

Spain.- SCE-Directive has been implemented in Spanish system by means of Law 31/2006, of 18th October, regarding the involvement of workers in European Companies and Cooperatives (LITSCE). Prior to the law being passed, the draft law approved by the Government and, as such, referred to the Parliament had the sole objective of transposing SE-Directive. The decision to prepare a single regulation that transposed the two directives, simultaneously, was adopted during parliamentary proceedings.

For this reason, transposition of SCE-Directive wasn't and couldn't have been the object of formal consultation with social partners, specifically with the representatives of organisations in the social economy sector. In any case, this omission had an essentially formal nature since the Government, informally, had the opportunity to consult the legal text proposed with the representative organisations in this sector.

Sweden.- SCE-Directive was implemented in Swedish legislation through Act (2006:477) on the involvement of employees in European Cooperative Societies (l*ag om arbetstagarinflytande i europakooperativ, Svenks författningssamling*). The Act came into force on 18 August 2006.

To implement the Directive, the government prepared the draft, which was referred for consideration to relevant social partners and bodies (32 organisations whereof 27 commented the referral) in April 2005. The proposal was also referred to the Council on Legislation (*Lagrådet*) to ensure that it did not conflict with existing legislation. Government proposition (2005/06:170) underlies the Parliaments (*Riksdag*) adoption of mentioned Act.

United Kingdom.- The SCE-Directive was implemented through a Statutory Instrument, introduced under the European Communities Act 1972, which permits the Secretary of State to make regulations. It is Statutory Instrument 2006 No. 2059 : the "European Cooperative Society (Involvement of Employees) Regulations 2006". These Regulations simply implement the Directive. Again in contrast to the legislative arrangements made with

reference to the European Company, separate Regulations have been made to change domestic law to take account of EC Regulation 1435/2003/EC. The Regulations were made on 25 July 2006, laid [before parliament] on 27 July 2006, and came into effect on 18 August 2006.

In line with UK practice, there was a period of consultation by the government, on both the EC Regulation and the EC Directive, before the Regulations came into effect. A consultative document was published by the two government departments involved, Her Majesty's Treasury (HMT) and the Department of Trade and Industry (DTI) in March 2006.

The results of the public consultation were published in July 2006. Only seven responses were received. These came from an umbrella group for cooperatives (Cooperatives UK), two government agencies, two co-operative societies, a credit union association, and a law firm. Neither of the main social partners – the Confederation of British Industry (CBI) and the Trade Union Congress (TUC) – responded to the consultative document, and it should be emphasised that there was no formal process specifically involving the social partners.

2. General legal framework

2.1 Objective

1. The centrality of the employees' right to involvement in the establishment and working of a European Cooperatives Societies (ECS) constitutes one of the principles set in the Community regulation on this issue throughout its long preparation process. This principle has a double legal coverage. On the one hand, Council Regulations (EC) no 1345/2003 qualifies the rules on involvement as an *indispensable complement* of the statute on the ECS itself (paragraph 17, Preamble). On the other, art. 1.2 Council Directive 2003/72/CE establishes that "To this end, arrangements for the involvement of employees shall be established in *every SCE* (...)".

   The right to involvement of employees in the scope of undertakings taking the form of a cooperative society does not offer a novelties in the majority of Member States, in which their legal systems establish formulae for the right to involvement with regard to employers adopting measures of a labour nature, or with regard to the evolution and functioning of the undertaking. These formulae, however, do not follow a uniform pattern; quite the opposite, its main feature is diversity affecting both the application of the right to involvement and its substantial contents. The idea has been expressed quite clearly in paragraph (5) of the Preamble to Directive 2003/72/EC, by stating that "the great diversity of rules and practices existing in the Member States as regards the manner in which employees´ representatives are involved in decision-making within cooperatives (…)".

   Not only has this diversity made it impossible to establish a single model for involvement applicable to the SCE. It is also at the origin of one of the main concerns sought by the Community regulation when it comes to regulating the right to involvement in the sphere of the European company. This concern lies in the establishment of a network of measures that ensure the principle known as *before and after.* The Preamble to the Directive mentions this principle in up to two occasions. Firstly, paragraph (3) states that "in order to promote the social objectives of the

Community, special provisions have to be set, notably in the field of employee involvement, aimed to ensuring that the establishment of an SCE does n*ot entail the disappearance or reduction* of practices of employees involvement existing within the entities participating in the establishment of an SCE (…)". Also, paragraph (21) strongly states that "it is a fundamental principle and stated aim of this Directive to secure employees' acquired rights as regards involvement in company decisions. Employee rights in force before the establishment of SCEs should provide the basis for employee rights of involvement in the SCE (…)".

2. Art. 1 of the SCE-Directive, under the title "Objective", states two provisions. Firstly, the first section defines the scope of material implementation, which is "the involvement of employees in the affairs of European Cooperative Societies (…), as referred to in Regulation (EC) no 1435/2003". Secondly, as mentioned earlier, the second section regulates the establishment of rules of involvement "in every SCE (...)".

   The transposition into national regulations of the two provisions mentioned has not given rise to any problems, and has been articulated through two means. In the first, national law incorporates these provisions directly and expressly. In the second, incorporation is done indirectly or implicitly. Slovenia, Slovakia, Poland and Spain follow the former model, whilst Czech Republic, Finland, Italy, Malta, Sweden and United Kingdom follow the latter model.

   Also, most of the national laws regulating the right to involvement expressly acknowledge, in their content, their nature as a development of Directive 2003/72/CE. Nevertheless, in some cases, this reference is contained, rather than in the body of the transposition regulation, in other places such as the Preamble (Cyprus), an Annex (Lithuania) or in the proposal written by the pre-legislative body (United Kingdom). In any case, national provisions that do not mention their nature as a regulation transposing Community law are in the minority. Hungary and Sweden are an example of the latter.

3. Most of the transposition laws simply incorporate, as shown, the provisions contains in art. 1 of the Directive. Besides this, some regulations have declared the validity of the before/after principle. The German regulation offers an excellent example of the establishment of this principle in regulation. Following on the statements contained in the Introduction to the SCE-Directive, art. 1 of the German Law (SCEBG) clarifies, in subparagraph 2, that *"the purpose of this Act is to safeguard the acquired rights of employees in a European company to participate in company decisions. The existing rights of participation in the companies establishing the European company shall be definitive in determining the nature of the employees' rights of participation in the European company".* Article 1, subparagraph 3, deals with the rules of interpretation of the SCEBG assessing that *"the provisions of this Act and the agreement (...) shall be interpreted in such a way as to promote the European Community's aims of securing the involvement of employees in the European company".* Finally, subparagraph 4 extends the safeguard of acquired worker's rights in the before-after-perspective also to the phases after formation of a European Cooperative Society, setting that *"the principles set out in subparagraphs (1) to (3) shall also apply to structural changes to an established European Cooperative Society, and to the effects"*.

2.2 Definitions

A. General considerations

Article 2 SCE-Directive, with an aim that is not only pedagogical but essentially legal, provides the definition of the most important concepts or institutions that appear therein. Specifically, there are eleven definitions referring to: SCE, participating legal entities, subsidiary, concerned subsidiary or establishment, employees' representatives, representative body, special negotiating body, involvement of employees, information, consultation and participation.

A comparative analysis of the definitions stated by the Community regulation and national transposition laws gives rise to some interesting conclusions. Firstly, and probably the most significant, is the large correspondence existing between the former and the latter. However, this correspondence is not only formal or in name. The internal laws of Member States do not only offer a notion of the eleven Community concepts; the definitions of the concepts provided by these laws correspond, substantially and literally, to the notions stated in the Directive.

Without prejudice to what is stated below with regard to some terms in a few legal systems, some of the differences that may be detected are of minor importance, as occurs in the substitution of the conjunction *"and"* by conjunction *"or"* in defining, as per art. 2.i. SCE Directive, "information" (Finland or Latvia). And, in other cases, these differences are not only permitted by the Directive, but favoured or encouraged by it. This is the case for the concept *"employees' representatives"*, which art. 2.e. of the SCE-Directive remits to national laws or practices, and is often contained in different provisions of the law transposing the involvement of employees in the SCE (Austria, Cyprus, Denmark, Estonia, Latvia, Slovenia, Spain or Sweden). Moreover, except perhaps for Netherlands, Latvia and Sweden, omissions are limited in quantity and irrelevant from a qualitative perspective. In this sense, for instance, several laws transposing SCE-Directive do not include the concept "European Cooperative Society" directly, making explicit or implicit reference to regulations that have legally developed Regulation 1435/2002 (Austria, Hungary and Latvia).

Independent of the correct transposition of the definitions established in the aforementioned art. 2 of the SCE- Directive, several national regulations (Finland, Cyprus, Germany, Hungary, Ireland, Lithuania, Netherlands, Portugal, Poland and United Kingdom) enlarge the catalogue of definitions, introducing new concepts based on the specific nature of their legal systems. The definition of certain terms included in a concept by means of a reference to Community provisions other than Directive 2003/72 is not infrequent. In this sense, several regulations (Cyprus, Czech Republic, Estonia, Hungary, Italy, Lithuania, Malta and Poland) reproduce the provisions literally or refer to the provisions established in Directive 94/45/EC in order to provide legal content to the notion of *dominant influence,* which plays a basic role in the definition of "subsidiary" undertaking in the context of art. 2.c. but is not described therein.

The decision of Maltese Regulations to establish a closing clause in the chapter of definitions is especially interesting. This clause states that, in view of the possible omission that national law may have incurred in, or possible doubts in interpretation that may rise in the application of this law, any omitted concepts shall be substituted and the concepts discussed will be interpreted and implemented pursuant to SCE-Directive provisions. In this sense, the SCE-Directive, which lacks in itself direct performance, may end up becoming either a

substitution regulation or an integrating regulation. The Irish draft Regulations included a similar clause, stating that any word or expression which is used in the S.I. and which is also used in the Directive has the same meaning in the legislation as in the Directive.

B. Analytical comments

Austria.- SCE-Act adopts the definitions laid down in art. 2 of SCE-Directive. Accordingly "participating legal entities" means companies and firms directly participating in the establishing of an SCE. "Subsidiary" of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence defined in accordance with § 176 ArbVG (transposing directive 94/45/EC). "Concerned subsidiary or establishment" means a subsidiary or establishment of a participating legal entity which is proposed to become a subsidiary or establishment of the SCE upon its formation. Further definitions in terms of art. 2 of SCE-Directive arise from either the specific regulations of part VII or the reference to part VI stipulated in § 257 Abs 1 ArbVG.

Belgium.- The definitions of art.2 of the SCE-Directive have been reiterated in art. 3 of the *Convention collective nr. 88* (CC88). The overall impression is a copy and paste operation. However, the following differences are relevant: i) the definition of a dominant influence in the meaning of the SCE-Directive has been implemented by referring to the transposition of the notion of "dominant influence" under Belgian law; ii) the CC88 describes the representative body of the employees as an "organe transnational représentant les travailleuers". The SCE Directive does not refer to the epitheton "cross-border";iii) the notion of "workers' involvement" enshrined in the CC88 does not reiterate the descriptive definition of the SCE Directive. It opts for an enumerative definition. The "implication des travailleurs" is being described as "information, consultation or participation"; iv) the notion of workers'representative is not being defined in article 3 of the CCT nr. 84. The convention collective does provide sufficient indications in the subsequent articles to identify the Belgian workers' representatives; v) the notion of a concerned subsidiary or establishment has been transposed by reiterating –just as is the case in the SCE Directive- the concepts 'subsidiary' and 'establishment' . Thus, the notion establishment has not been repeated. The notion 'establishment' is not defined in other legal instruments of the Belgian legal order. In the perception of the Belgian lawyer, the concept amounts to an entity which is not endowed with corporate personality. The distinction between the concepts of "undertaking" and "establishment" lacks legal clarity.

Cyprus.- Article 2.b SCE-Directive refers participating legal entities to "companies and firms"; the national law, only to company. An explanation to this provided by the Cooperative Authority that was responsible for drafting the legislation, was that the Cyprus terminology for firms relates to companies not partnerships, as would be a literal translation of the word *firms*. For methodical reasons, the legislation also defines more concepts, like "Republic", "Registry" (is defined as the Registrar of the Authority for the Supervision and Development of Cooperative Societies) and "Member State" (means a member state of the European Union).

Czeck Republik.- The Czech SCE -Act defines all the concepts established by art. 2 SCE-Directive; and it does it often *verbatim*. Some comments can be made about it. **'**Subsidiary of company' means an undertaking over which another company exercises a dominant influence. A dominant influence is exercised by a legal entity with an over 50% direct or indirect share of that company's corporate stock that either controls more than one half of the

voting rights associated with the participation in the corporate stock or can nominate a majority of the members of the board of directors, supervisory board, administrative board or any similar competent body of the company. (Section 40 of the SCE-Act). Per the Czech Labor Code, all employees' representatives are defined as union organizations covering also the field of work safety and security. At the employer with no operating union organization, employees have the right to institute a work council and select a representative for the area of work safety and security who can not be a member of the work council at the same time. The regulation does not allow the co-existence of union organizations, work councils and a representative for the area of work safety and security within one enterprise. The operation of work council and the post of a representative for the area of work safety and security end the day a union organization is established.

Denmark.- The national law has chosen the term legal person instead of legal entity (art. 2.b). And it defines an establishment (art. 2.d SCE-Directive) as a work-place which is part of a cooperative.

Estonia.- The SCE-Act amending the TKS provides no explicit word-for-word definition of a *subsidiary* of a participating legal entity or of an SCE. However, the TKS defines a subsidiary through a definition of a controlled undertaking and exercising of a dominant influence. Nonetheless, definition of a *subsidiary* is not clear. The TKS defines a subsidiary of a participating legal entity or of an SCE through the definition of the controlled undertaking (art. 10 TKS). The same article also prescribes the exercising of a dominant influence. For the purposes of the TKS, "controlling undertaking" means an undertaking which belongs to a group of undertakings and which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation or the rules which govern it or by any other means by which it is possible to exercise direct or indirect influence on the other undertaking. The definition of consultation does not follow the exact wording of the Directive. Nevertheless, it does not undermine the overall understanding of the meaning of the consultation and its purpose in the TKS. The main concept of consultation is clear.

Finland.- The definition of "consultation" lacks the "*exchange of views*". "Participation" is similar to EC Directive, with the exception that the national law has added the term "*or such management groups or equivalent bodies which together cover the company's profit units*". The Finnish law implementing the Directive enlarges the definition, so that it also covers representation of a management group or a corresponding body – covering all the profit-centres of the enterprise – as meant in the Act on personnel representation in the administration of undertakings. This was done due to the peculiarities of the Finnish law in this context.

Germany.- Article 2.2. (1) SCEBG includes the word *managemen*t, understanding "the body which is directly involved in the establishment of the companies participating in the European Cooperative Society, or of the European Cooperative Society itself, and which runs the affairs of the company and is entitled to represent it. This shall be the management or administrative body in the case of the participating companies, and the management body or executive directors in the case of the European Cooperative Society".

In amendment to the EC definition of "involvement of employees", the German law uses the concept *rights of involvement*, which shall mean "*the rights accruing to the employees and their representatives in relation to information, consultation, participation and other forms*

of involvement. This may also include the exercise of these rights in a European Cooperative Society's group of undertakings." The last sentence is to be seen in the context of German codetermination laws.

Hungary.- The national law gives an extended definition for involvement of employees, as it adds: "Employee involvement includes information and consultation of employees and the exercise of employee participation rights". Also, a slightly different transposition can be found in the definitions of information and consultation. In both cases, the law misses the last few lines of the definitions. The law also provides further definitions in excess to the list of the SCE-Directive. Such definitions are: *management body* ("the Management Board or Administrative Board of the participating company, the management organ of a limited liability company or managing body of any other legal entity") and *workers employed in Hungary*, which is defined as persons employed within Hungary by a participating legal entities, European Cooperative Society or subsidiary or establishment thereof, irrespective of whether the European Cooperative Society has its registered office in Hungary.

Ireland.- The SCE-Act (draft) transposed the eleven definitions established by SCE-Directive; and all are reflected in the S.I. almost verbatim in draft Regulation 2 (Interpretations). The S.I., however, also proposes to include a number of additional interpretations for a range of other terms used in the legislation, between others the followings: i) "Appointed" refers to the appointment by employees in the absence of an election; ii) "Commission" means the Labour Relations Commission; iii) "Expert" is an individual who, from time to time, may be in a position in a body corporate or other body or organisation and iv) "Trade union" is an organisation which holds a negotiation licence under Irish trade union law.

The term 'participating legal entity' both in the Directive and the SI refers to companies and firms within the meaning of Article 48 of the Treaty and this definition includes co-operatives as well as legal bodies participating in the establishment of a SCE.

Italy.- Article 2 of the Legislative Decree has the same content of art. 2 of the SCE-Directive, except for the implementation of point e), that has been transposed according to the Italian model of employees representation, referring to RSU (*representazione sindacale unitaria*, according to the Protocol of 13th September 1994 or, if the Protocol is not applied, according to the relevant collective agreement). "Ssubsidiary" of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence defined in accordance with Article 3(2) to (7) of the Legislative Decree 2nd April 2002 n. 74 on implementation of the Directive 94/45/EC, which defines this legal entity as controlled firm.

Latvia.- Definitions of "participating legal entities", "concerned subsidiary or establishment" and "involvement of employees" have not been transposed. Instead, the SCE-Law provides the definition of "founding cooperative society", that means the cooperative society that is established in Latvia and directly participates in the establishing of a SCE.

Lithuania.- The IEDMEC introduces three new notions: *I) Central management,* under which a competent managing or administrative organ of a European Cooperative Society shall be understood; ii) *Management of another level*, i.e. the managing or administrative organ of the subsidiary of a SCE or its establishment or the manager of a subsidiary of a SCE and iii) *Competent organ of participating companies,* that means a negotiating body formed

by the agreement of the managing or administrative organs of the participating legal entities for the purposes of negotiating with the special negotiating committee on the involvement of employees in decision making.

Malta.- The definitions of terms are in line with the general definitions of the Directive with some changes as required by the so-called accessory definitions that have to reflect national practice. "Subsidiary" of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence defined in accordance with regulation 2 (4) to (9) of the European Works Council Regulations, 2004. Moreover, the SCE-Act specifies that in the absence of a definition given in these Regulations, words and expressions used in these regulations which are also used in Regulation (EC) No 1435/2003 or in Council Directive 2003/72/EC shall have the same meaning as they have in the EC Regulation or Council Directive.

Netherlands.- The definitions follow the Directive, but on some points there are differences from the text of the Directive. These differences concern the following points: i) the definition of information is rather different than the definition in the Directive. The Dutch law defines information as the informing of the SCE-works council or the employee representatives on questions which concern the SCE or one of more of her subsidiaries or establishment in a Member State, or which exceed the power of the decisión-making organs in a Member State; ii) the definition of participation is different the SCE-Directive. It contains a supplement in case the participation or the consultation concerns the appointment of members of the administrative board. In that case the participation rights regard just the non-executives of the board; iii) but, on the other hand, the notion of consultation is more restricted. The reason for this restriction is that in the domestic law concurs with the definition of consultation in the European Works Council Directive, which definition is also used in the transposition law of the European Company Directive. Consultation is, according to art. 2.1, the dialogue and exchange of views between the SCE and the SCE-works council or the employee representatives. The obligation that dialogue and exchange of views should be established "at a time, in a manner and with a content which allow the employees' representatives, on the basis of the information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SCE", has been left out from the definition as such, and has been included only in the Annex.

Finally, the SCE-Law contains two new definitions. The first one is the registration of a SCE. The other one is the parent company, that means a legal entity which is able to exercise direct or indirect control over another company, and is not itself a legal entity over which another company is able to exercise direct or indirect control.

Poland.- Some differences between the Polish SCE-Act and the Directive should be underlined. The first one refers to the definition of "representative body", and does not indicate the purpose of setting up a representative body contrary to what is established in the Directive. The second is with regard to the notion of "special negotiating body". While the SCE- Directive includes the input on the running negotiation, the Polish SCE-Act indicates the effect of negotiation; i.e., the concluding agreement relating to the employees' involvement rules.

On the other hand, national law introduces three new definitions: *Employee, identification data and establishment.* Identification data is described as the name or firm of a participating

company, subsidiary or establishment and the register office thereof, and whether they have an identification number or are registered in the register. Finally, establishment is an organizational unit without legal liability running the activity by means of separated group of persons and the materials sources.

Portugal.- The Portuguese legislator has added one more definition, concerning *quantitative reduction of employees' participation rights*. This means a proportion of members of the organs of the SE, within the meaning of participation, which is lower than the highest proportion existing within the participating companies.

Slovakia.- The Slovak legislator are transposed all the notions mentioned in art. 2 of SCE-Directive; and there are not divergences. **"**Subsidiary" means a company, in which other entity (company) has a majority of votes due to the fact that this entity holds shares of the company to which the majority of votes is attached, or due to the fact that it can - based on agreement with other entities - perform majority of voting rights in this company (art. 66a of the Commercial Code). Employees' representatives means relevant trade union, employees'/work council or employees'/work trustee. In a cooperative, in which members ("shareholders") of the cooperative are also employees of the cooperative, also special body of the cooperative elected by the General Meeting is deemed to be the employees' representative.

Slovenia.- Article 3 of the SCE-Act defines the main terms of the art. 2 SCE-Act. There is no specific definition of *establishment* in Slovenian legislation. And, on the other hand, the Slovenian SCE-Act does not specifically define the term 'employees' representatives'. However, the Slovenian legislation adopted a broad meaning of employees' representatives, who can either be members of works councils, a workers representative, a member of a supervisory board representing workers, a workers representative in the council of an institution and also appointed or elected trade union representative. Following art. of the SCE-Act, which regulates protection of employees' representatives, the latter also include the members of the special negotiating body, the members of the works council of the SCE, the employees' representatives who perform functions in connection with the information and consultation procedure and the employees' representatives in the administrative or supervisory bodies of the SCE, and employees' representatives in the general meeting or section or sectorial meetings in the Republic of Slovenia.

Spain.- The SCE-Act, with an aim that is not only pedagogical but essentially legal, provides the definition of the most important concepts or institutions that appear therein. With regard to the list of definitions transposed, Spanish legislator proceeds to an almost literal transcription thereof.

Sweden.- Swedish law does not offer a definition of the following terms: "Special negotiating body", "involvement of employees", "information" and "consultation". However, there is no doubt with regard to what a negotiating body. Also in the Determination in the Workplace Act (1976), the concept negotiation is used instead of consultation and it refers to the fact that there should be dialogue and discussion.

United Kingdom.- The national SCE-Law provides a number of specifically British definitions for employee, dismissal, UK employee and UK members of the special negotiating body. Also, explains some of the abbreviations used and defines some of the

terms used later in the Regulations, such as a "total workforce", "two-thirds majority vote" and an "absolute majority vote".

2.3 Legal regulation of SCE employees' right to involvement: a plurality of systems

1. In their own scopes of implementation, Directives 94/45/EC and 2001/86/EC share a number of legal regulation principles; specifically, two in particular which we must highlight. The first principle refers to the substantial unity of the regulation systems that each Directive establishes which are implemented in a uniform manner without distinction; in one case, for *all* Community-scale undertakings or groups of undertakings and, in the other, for *all* European companies. It is true that with regard to the SE, SE-Directive establishes certain legal differences with regard to the means used to establish the SE itself[2]. However, these are secondary differences that do not affect the core of the rights regulated herein and that are implemented indifferently in any SE regardless of particular circumstances, such as iots size.

   The second principle that both Directice – 94/45 and 2001/86 - share refers to the connection between the implementation of information and consultation procedures or the procedures to establish a European Works Council or, given the case, the right to involvement through conventional and legal means. The implementation of the legal system – that is, subsidiary provisions or standard rules – is essentially conditioned, in both Directives, to not being able to reach an agreement; that is, to the non-existence of a conventional system; or, in other words, the existence of a collective agreement acts as a condition for non-application of the substantial provisions stated in the corresponding national laws.

   SCE-Directive has not collected any of these principles; quite on the contrary, the fundamental options thereof point in the opposite direction. Firstly, Directive 2003/72/EC does not establish a single legal scheme with regard to the right to involvement of SCE employees. The Community regulation starts from a diversity of schemes built, at least in its formal formulation, according to the subjects participating in its establishment. In this sense there are two main legal schemes: on the one hand, the scheme applicable to "SCEs established by at least two legal entities or by transformation" (Section II); on the other, the scheme ruling "SCEs established exclusively by natural persons or by a single legal entity and natural persons" (Section III).

   This dual system of schemes is accompanied by a breaking-away from the second principle which sets collective agreement as the primary means to regulate the rights dealt with. In the sphere of the cooperative society, this is a principle that only rules, without prejudice to clarifications made below, to SCE established by legal entities or by transformation. Or, in other words, this principle does not stand with regard to SCE established exclusively by natural persons or by a legal entity and natural persons. For this second group of SCE or, to be more technically precise, for certain SCE belonging

[2] For instance, art. 3.2.a.ii. SE-Directive establishes special provisions for election or appointment of employees' representatives in SE established by way of merger.

to the second group, the right to involvement has, initially, a legal origin. Furthermore, and not least, SCE-Directive establishes, in Section IV, provisions for participation in the general meeting or section or sectoral meeting, which may also be imposed apart and independent from collective agreement; that is, they work *ope legis*.

2. Most of the national transposition laws incorporate into national law the dual legal scheme of the right to involvement of employees in SCE, as established by the SCE-Directive. However, a reduced group of legislations has not developed the provisions established in arts. 8 and 9 of the Community regulation, and have therefore carried out an inadequate transposition. We will return after.

3. Right to involvement applicable to SCE established by at least two legal entities or by transformation

3.1 Provisions applicable to an SCE registered in the Member State

3.1.1 Scope of implementation

1. From the point of view of its legal content, SCE-Directive establishes a basic distinction between two large groups or provisions: the "main" provisions and "accessory" provisions. The former group, "main" provisions, are applicable to any SCE which has its registered office in a specific Member State and are legally effective in the SCE organisation as a whole, its subsidiaries and establishments, including those outside the territory of the specific Member State. "Accessory" provisions, on the other hand, are applicable exclusively to subsidiaries and establishments of the SCE (or a subsidiary or, given the case, the participating legal entuty that constitute the SCE) which are located in the territory of the Member State, the registered office thereof being located in a different Member State.

   Two notes identify the main provisions. Firstly, the *extraterritoriality*, since they are applicable not only in one Member State but, more broadly, in all States that make up the European Union (EU). Secondly, the *excluding* nature of their implementation with regard to any other regulation. Except where a single national law expresses the opposite, the provisions contained in other European legislations cede to this rules that, therefore, enjoy preferential implementation.

2. With the exception of a few cases (Austria, Germany, Denmark, Italy and Spain), the articles in national transposition laws do not expressly and directly differentiate between these two main categories of juridical rules. Nevertheless, these laws have not dispensed with this duality in regulation that, in the body of the SCE-Directive, fulfils a legal role with a structural nature; that is, of an essential nature. Hence, this division is present, in one way or another, in all European legislations. Logically, the field of application of these two categories of provisions are different. In this section, we shall refer to main or principal provisions.

3.1.2 Negotiating procedure

3.1.2.1 Procedure responsibility

As has been reasoned earlier, and herein again, one of the principles that inspire the Community regulation on the right to involvement of employees in an SCE, is that these rights are considered to be an "indispensable complement" to the establishment of the SCE itself. With the aim of facilitating strict compliance with this core principle, art. 3.1 SCE Directive establishes the responsibility for the negotiation procedure of the involvement of employees in the SCE on the competent bodies of the participating legal entities in the establishment of the SCE.

In accordance with the rule, all national laws provide, direct or indirectly, that the responsibility to establish the conditions and means necessary for the negotiation of the rights of involvement with employees' representatives is incumbent upon these bodies. Non-compliance with this duty on behalf of the competent bodies in the participating legañll entities establishing the SCE may be legally demanded before the competent national courts. Furthermore, it may trigger specific responsibilities of an administrative nature, amongst others (for example, Spain).

3.1.2.2 Start of procedure

A. General considerations
Article 3.1 SCE-Directive imposes to the management or administrative organs of the participating legal entities, once they have draw up a plan or the establishment for the SCE, the duty to initiate procedures to open negotiations with employees' representatives *as soon as possible* in order to arrangements the rights to involvement. These procedures include communication of the information regarding the identity of the participating legal entities and subsidiaries or establishments and the number of employees.

The national laws repeat these provisions, often verbatim (Austria, Cyprus, Denmark, Italy or Sweden) and, always, in an appropriate manner. Nevertheless, some countries complement these rules in three ways. On the one hand, uncommonly, some laws limit the maximum period during which the procedure must be started. For example at forty-five days counting from the publication of the project (Spain) and thirty days of the submission to the manager of the Register (Lithuania). The Polish legislator also introduces additional and different provisions, obliging the start of the negotiating procedure on the same day for all participating legal entities. On the other hand and more frequently, national laws (Czeck Republic, Estonia, Luxemburg, Poland, Portugal, Slovenia and Spain) enlarges the catalogue of issues which must be communicated at the start of the procedure (Czech Republic, Ireland, Lithuania, Poland and Slovenia). Finally, some regulations establish the possibility that no collective body exists to receive information, in which case the addressees of information are all employees individually (Czeck Republic, Germany, Ireland, Lithuania, Netherlands, Portugal, Slovenia and United Kingdom)

B. Analytical comments
Belgium.- The responsibility for the start of negotiations as enshrined in article 3.1. of the EC Directive has been transposed in article 6 CC88. This article goes *beyond* the wording of the Directive by providing a more elaborated content of the information which is to be transferred to the workers' representatives. Thus, it adds that besides the numbers of the participating companies, the proportion of the workforce in these companies to the overall

workforce needs to be conveyed. Futhermore, the Belgian law in the line of the *Kühne and Nagel* and *ASD Anker* judgement takes into account the obligations pending on the subsidiary companies to communicate information. It is unclear how these cross-border obligations can be enforced in Belgium.

Czeck Republic.- The management or administrative organs of the participating legal entities form this subject as soon as possible after publishing the draft plan for the establishment of an SCE. This applies also to the concerned units in the Czech Republic, whose SCE is to be based in another country. They are obliged to provide information about the business address and form of all participating units of an SCE, the number of employees of the SCE at the date of publishing a plan for the establishment of the SCE, the manner and scope of involvement of these employees on the composition of the management organs of the participating legal entities, and the number of employees entitled to exercise such involvement. The start of the negotiating procedure is “as soon as possible” after the drawing up of a plan for establishing an SCE.

Estonia.- Information on the number of employees shall be presented by each Member State and information shall be indicated concerning all relevant undertakings and enterprises separately. If employees in participating legal entities have the right to participate, information shall also be provided on the form and extent of participation and the proportion of employees’ representatives of the total number of employees in all the participating legal entities shall be indicated.

Finland.- The duty to inform is extended to all subsidiaries and establishments involved in the establishment of the SCE. The aim of this provision was to promote arrangements regarding the organization of representation.

Germany.- Art. 3 SCE-Directive is implemented by art. 4 sub. 1 SCEBG. The latter does not provide any deadline or regularity concerning the information of the companies` employees when the management or the administrative organs of the participation companies draw up a plan for the establishment of an SCE. The reason is that a speedy and proper procedure is in the interest of the participating companies.

Ireland.- Draft Regulation requires the competent organs of the companies participating in the establishment of a SCE to take the necessary steps to initiate negotiations with the employees’ representatives. This covers all four means by which a SCE is set up. And further requires the provision of information about the identity of the companies it is proposed will participate in the SCE, the subsidiaries, number of employees in each company, the countries they are located in, the number of employees to be covered by any participation system and this information must be provided to the employees’ representatives or, in the absence of such representatives, to the employees themselves.

A general requirement is set out in draft Regulation 3, which states that arrangements for the involvement of employees must be established in accordance with the regulations in the S.I. in all SCEs registered in the State.

Latvia.- The negotiations shall be opened immediately after the announcement of draft terms of merger of cooperative societies, after agreeing a plan to form a subsidiary cooperative society or after agreeing the project to transform other legal entity into a SCE.

Lithuania.- According to SCE-Act, "as soon as possible", but not later than within 30 days of the submission to the manager of the Register of legal persons' of the draft conditions for the establishing of a SCE by merger or of the reorganisation of a cooperative society into a SCE, the managing or administrative organs of the participating legal persons and concerned subsidiaries or establishments or participating legal persons shall inform in writing the representatives of the employees or, in their absence, shall inform the employees at the general meetings or by other usual means used for providing information about: I) the plans to establish a SCE and to present the relevant information; ii) the participating legal persons, concerned subsidiaries and establishments and the employees' representatives in such subsidiaries and establishments; iii) the total number of employees employed by the participating legal persons, concerned subsidiaries and establishments and the number of employees in each of them, also the total number of employees in each Member State; iv) the number of seats in the special negotiating committee for the representatives of the employees of each participating legal person, concerned subsidiary and establishment, and their distribution by different Member States; v) the participation rights in the participating legal persons; *id est,* what proportion of the administrative or supervisory organ of such companies the employees or their representatives are entitled to appoint, elect or nominate for appointment and/or to refuse to agree to their appointment and vi) the rights of participating cooperative societies.

Malta.- The national law states that when the management or administrative organs of participating legal entities draw up a plan for the establishment of an SCE in Malta, they shall as soon as possible take the necessary measures to start negotiations with the representatives of the legal entities' employees on arrangements for the involvement of employees in the SCE.

In order to facilitate the negotiation procedures, the management or administrative organs of the participating legal entities are obliged to give all the relevant information about the identity of the participating legal entities, concerned subsidiaries or establishments and the number of their employees as well as any matters related thereto, to the employees' representatives of the participating legal entity, its concerned subsidiaries and establishments, or if no such representatives exist, to the employees themselves. Such measures shall be taken within three weeks from the date when the plan for the establishment of an SCE s drawn up by the legal entities concerned.

Netherlands.- The participating legal entities are obliged to supply the SNB with sufficient information. This information shall include at least the proposal to establish a SCE and details of the establishment procedure until the registration of the SCE. The SNB is not required to receive any information that may reasonably be assumed to seriously hamper or adversely affect the functioning of participating legal entities, their subsidiaries or establishments. The participating legal entities have the right to swear the SNB to secrecy.

Poland.- Polish law adds two more elements: identification data of participating legal entities, concerned subsidiaries and establishments and number of employed workers in each of participating legal entities, concerned subsidiaries and establishments.

Portugal.- The Portuguese SCE-Act imposes some additional obligations only to the participating legal entity with the higher number of employees which headquarters are situated in national territory. This legal entity shall: i) Determine the total numbers of the SNB members, as well as the Member States in which they should be elected or appointed,

according to the number of employees of the participating legal entities, concerned subsidiaries and establishments, and the criteria referred below; ii) Inform the SNB of the plan and the actual process of establishing the SCE up to its registration; iii) Inform the other participating legal entities and the employees' representatives participating on the appointment or election of the SNB members of the total number of SNB members, as well as the Member States in which they should be elected or appointed; iv) Establish a reasonable period, starting from the information previous mentioned, to the election or appointment of SNB members from each Member State, according to the applicable regime. The obligations previously mentioned imposed only to the participating legal entity with the higher number of employees, which headquarters are situated in national territory, refer to a *reasonable period* to the election or appointment of SNB members from each Member State. The concept of "reasonable period" is not, however, necessarily coincident with the one "as soon as possible".

There might be a doubt if the restricted scope of point (ii) regarding only the participating legal entity with the higher number of employees, liberating all others from these obligations, is compatible with the Directive's provisions, mostly because article 3.3 SCE-Directive refers to the participating legal entities, using the plural form.

Slovakia.- In accordance with Slovak law, the management or administrative organs of participating legal entities must commence procedure "as soonest as possible". They must take necessary steps to commence negotiations with employees' representatives of participating legal entities, concerned subsidiaries and concerned establishments about future involvement of the SCE's employees and provide employees' representatives or directly employees with following information: i) seat and legal form of all participating legal entities, concerned subsidiaries and concerned establishments; ii) number of all employees as of the date of publishing the plan for the SCE establishment and iii) number of employees having right to influence composition of participating legal entities' supervisory or administrative bodies/organs and about manner and extent of this influence.

The national law does not explicitly state that management or administrative organ of participating legal entities must commence negotiations as soon as possible *after draw up a plan for the establishment of the SCE*. The SCE-Law only binds management or administrative organ of participating legal entities to commence negotiations with employees *as soonest as possible*. However thanks to the definition of participating legal entities as legal entities directly participating in the establishment of the SCE as well as other legal provisions, it is possible to conclude that negotiations must be commenced "as soonest as possible" in the course of process of the SCE establishment. And the soonest moment is the moment when participating legal entities draw up a plan for the SCE establishment.

Slovenia.- The SCE-Act requires explicitly more extensive information to be provided to employees' representatives that the SCE-Directive itself. This additional information referred to the structure of the participating companies, concerned subsidiaries and establishments and their distribution across the Member States, the details of the existing employees' representatives in these companies and, to the end, the number of employees entitled to participate in the bodies of the company.

Spain.- In all cases, information must be provided regarding the "address proposed for the registered office". But beside these and when systems of participation are implemented in the participating companies, the administrative or supervisory body must provide

information regarding the nature of these systems, the number of employees covered by them and the proportion that these employees represent with respect to the total number of employees in the participating companies.

3.1.2.3 Establishment and composition of the Special Negotiation Body

A. General considerations

1. In the legal structure of SCE-Directive, the special negotiating Body (SNB) is an essential piece with regard to the implementation of the employees' right to involvement since this body is appointed with the fundamental task of opening negotiations with the aim of providing a substantial or material content to those rights. Thus, the attention paid to it by the Community Directive, article 3 thereof dealing not only with its creation as would appear from the unclear heading to this precept; it also regulates other different issues, such as its roles and its workings. In any case, and currently focussing the analysis on all issues regarding its creation, paragraph 2 of aforementioned art. 3 establishes a set of provisions regarding the composition of the SNB, with its complexity as its standout feature.

   The field of implementation of the rules of this article is not uniform. Two provisions with different scope can be identified; the first, of a general nature, and the second, with implementation limited to the SNB of the SCE formed by way of merger. Furthermore, provisions in the Community regulation with regard to the establishment of the SNB are not homogenous with regard to their nature. Whilst some can be inscribed amongst the "main" provisions, others may, on the other hand, be inscribed within the "accessory" provisions. In these sense, and for example, the rules about the election or appointment of the member of SNB are "accessory provisions". Now, we will analyse only the first category.

   The rules regarding the manner of distributing employees' representatives in the SNB are "main" provisions, showing a diverse legal regulation on this issue. In accordance with art. 3.2.a. i) SCE-Directive, members of the SNB are distributed proportionally to the number of employees in each Member State in the participating legal entities, subsidiaries or establishments such that, in each Member State, there "is one seat per each portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of employees employed" throughout the Member States". As a special provision, applicable to an SCE formed by way of merger, paragraph a) ii) establishes that, in this hypothesis, there are such further additional members from each Member State as may be necessary in order to ensure that the SNB includes "at least one member representing each participating cooperative which is registered and has employees in that Member State", as long as, in accordance with the project, the legal entity ceases to exist as a separate legal entity following the registration of the SCE.

   An exact implementation of this special provision requires taking a number of complementary provisions. Firstly, SCE-Directive establishes a maximum limit to the additional members of the SNB that may be elected or appointed with the aim of guaranteeing, in the case of an SCE formed by way of merger, the presence of a representative of each registered participating cooperative employing workers in the State concerned, in the SNB. This maximum limit is equivalent to "20 per cent of the number of members" elected or appointed initially. Secondly, in the case that the number of participating legal entities is higher than the number of additional seats, theses seats

"shall be allocated to cooperatives in different Member States by decreasing order of the number of employees they employ". Finally, the composition of the SNB does not entail a double representations of the employees concerned.

The rules that have been explained above regulate the composition of the SNB in a very specific time sequence, which corresponds to the start of the procedure. Nevertheless, during the course of action of the SNB – which as will be reasoned below may continue for a whole year -, different difficulties may be encountered that alter some of the essential elements that have been considered and weighed up for the first establishment of the SNB. SCE-Directive does not formulate any provision that contemplates any sudden change to those essential elements.

2. The transposition laws closely follow – at times with slight differences (Germany) and at others literally, word-for-word (Cyprus, Finland, Ireland or Sweden) – both the general provision on the composition of the SNB stated in art. 3.2.a).i) of the Directive, and the special provision and its limitations, applicable to SCE established by way of merger exclusively, stated in the following paragraph, that is, art. 3.2.b).ii) of the SCE-Directive. This is the manner followed by the legislations of Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia, Spain or Sweden.

   National singularities focus, essentially, on two aspects of the legal scheme regarding the establishment and composition of the SNB. Firstly, with regard to the special rule applicable to the establishment of an SCE by way of merger (Czek Republic, Estonia). Secondly, with regard to the consequences of any changes or vicissitudes affecting the initial composition of the SNB (Hungary, Latvia, Malta, Poland, Slovakia, Slovenia, Spain, Sweden and United Kingdom). The role played by these singularities is to complement or develop the provisions established by the Directive, and do not lead to conflicting divergences.

   The legal provisions relative to the establishment and composition of the SNB are part of the imperative law in the wide majority of European national legislations; that is, it is a right that is not found in the provisions open to collective negotiation. The exception to this rule can be found in the Finnish legal system, which allows agreement to establish amendments to these provisions.

B. Analytical comments

Austria.- The SCE-Act (ArbVG) contain detailed provisions for the establishment, activities and competences of the SNB that basically apply to the SCE too. In the case of an SCE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the SNB includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SCE. If the number of companies is higher than the number of additional seats available, these additional seats are allocated to companies in different Member States by decreasing order of the number of employees they employ (§ 216 Abs 4 in connection with § 257 Abs 1 ArbVG). The SCE-ACt established that the members of the SNB are appointed by a resolution of the works committee, of the works council (in the case where a works committee does not exist in a company), of the central works council (in enterprises) or of the group representative body (in corporate groups)

The institution competent has to take into account that there should be at least one member representing each participating company which has employees in the Member State concerned. The decision is taken in the presence of at least half the members and with a majority of those members' votes that represent an absolute majority of the employees in the group, enterprise and company.

Belgium.- The rules regarding the constitution and the composition of the SNB have been properly transposed in articles 7 and 9 of the CCT. There are no significant differences. One important loophole is remedied by the Belgian CCT 88. The SCE-Directive does not provide a scenario wherein the structure of the participating legal entities changes *pendente contractu contrahendo,* during the bargaining process. In this case, a new SNB shall be established.

Czech Republic.- The SNB seats allocated to the representatives of employees of participating units in the territory of the Czech Republic shall be apportioned so as to have at least one direct representative per the employees of each participating unit. If this is not feasible, the SCE members shall be elected so as to allow the employees of every cooperative with a registered address in the Czech Republic, which it is proposed will cease to exist as a separate legal entity, and which is participating in the merger, to be represented by one direct representative in the SNB. The remaining SNB seats shall be allocated to the representatives of other employees in the Czech Republic in a manner envisaged by Section 48 (see below). If there are no such seats left, the SNB members shall represent all employees in the Czech Republic.

If the number of SNB seats is still smaller than the number of cooperatives with a registered address in the Czech Republic, which it is proposed will cease to exist as separate legal entities, and which are participating in the merger, even after the possible increase in the number of SNB members, these seats shall be allocated to the direct representatives of members of the cooperatives with registered addresses in the territory of the Czech Republic, which it is proposed will cease to exist as separate legal entities, by decreasing order of the number of employees they employ. They shall at the same time represent all employees from the Czech Republic, each of them by equal proportion.

If, in the course of negotiations regarding employee involvement in an SCE, material change occurs in the number of participating units or their employees or in the distribution of the numbers of employees in individual participating units, resulting in material deviation of the composition of the SNB, a fresh reallocation of SNB seats shall be performed. However, these changes shall affect as few extant SCE members as possible.

Estonia.- In the case of a SCE formed by way of merger, the national law provides two rules. On the one hand, if the number of participating legal entities which are not represented through a member in a SNB is less than 20 per cent of the number of members in the SNB, each participating legal entity which is not represented shall present one additional member. On the other hand, if the number of participating legal entities which are not represented through a member in a SNB is more than 20 per cent of the number of members in the SNB, the additional seats shall be divided between participating legal entities which are not represented. The division shall be made pursuant to the number of employees in theses participating. The division of additional seats shall be commenced from the largest participating legal entities and shall be continued by decreasing order pursuant to the number of employees.

Finland.- The SCE-Law maintain that, if the number of seats on a special negotiating body allocated to Finnish participating companies is less than or equal to the number of participating legal entities, these seats shall be allocated among Finnish companies one at a time by decreasing order of the number of employees they employ. If the number of seats on a SNB allocated to Finnish participating legal entities is greater than the number of participating legal entities, one seat shall be allocated first to each Finnish legal entity, and thereafter the remaining seats among the legal entities in proportion to the number of employees they employ. The provision would concern only the seats of the SNB, not on the election of representatives of the personnel. And it is based on the idea of the art. 3.2.b of the SCE-Directive guaranteeing that there is at least one representative from participating company having personnel in the state.

However, employees can, by agreement, deviate from the provisions regarding the allocation of seats among Finnish companies. Wherever possible, the representation of all Finnish participating legal entities and groups of employees shall be secured by agreement. Here the representation must be guaranteed to all the participating Finnish legal entities and groups of personnel. The liberty to agree would concern all aspects the electing (amount, fields, functions of the personnel taken into account).

Hungary.- The Hungarian law transposes SCE-Directive, stating that the SNB shall have at least 10 members. And also, the legislation regulates the cases of removal of a member of the representative body and stipulates that the SNB shall be dissolved on the date of registration of the European Cooperative Society. In the context of SCE-Act, “removal” means that the mandate of an SNB member shall cease if: i) he or she resigns; ii) the mandate expires; iii) he or she becomes entitled to exercise employer´s rights at the European company or one of its subsidiaries or establishments and iv) the employment relationship ceases. In case of resignation, the member shall be replaced by the alternate member elected in the same Member State.

Italy.- The Legislative Decree provides, not only in the case of an SCE constituted by way of merger, that the SNB shall include at least one member representing each participating company which has employees. This provision is subject to two limits: the first one is that the final composition of the SNB must not exceed the total number of the SNB’ members; the second one is that the inclusion must be done “if it is possible”. These two limits are not provided by the SCE-Directive but come from the social agreement and they are in conformity with it.

Latvia.- If the number of employees of a founder company changes and such change affects the composition of a special negotiating body, the composition of the special negotiating body shall be changed accordingly. The SNB body shall be recognised as established when all its members have been elected. In the case of a SCE is formed by merging cooperatives, if the number of founder cooperative is higher than the number of additional seats available in the SNB, additional seats shall be allocated to employees of cooperatives in different Member States in which there are more employees.

Lithuania.- The number of seats allocated to the employees employed in one Member State shall be established in proportion to the total number of employees of all the Member States, according to a scale that starts with one seat in the case where the personnel of a company is less than 10 per cent of the total number of employees and ends with ten seats, if the personnel exceeds 90 per cent of all employees.

If the number of the participating cooperative societies, establishment of SCE or its subsidiaries and their establishment is higher than the number of additional seats, these additional seats shall be allocated between the participating societies of different Member States with the highest number of employees. If a Member State is allocated more than one seat, the representatives of employees shall be appointed from different companies. When appointing or electing members of SNB the balance of gender shall be promoted.

Malta.- Regulation requires that an appropriate adjustments should be made to the composition of the SNB in two cases. Firstly, if the changes are made to the participating legal entities, concerned subsidiaries or establishments which result in the number of ordinary or additional members which employees would be entitled to elect or appoint under this regulation either increasing or decreasing, the original appointment or election of members of the SNB shall cease to have effect and those employees shall be entitled to elect or appoint the new number of members in accordance with the provisions of the SCE-Law. Secondly, a member of the SNB is no longer willing or able to continue serving as such a member, the employees whom he represents shall be entitled to elect or appoint a new member in his place.

Poland.- According to the national law, the mandate of the member of the SNB being of employee participating legal entities, concerned subsidiary or establishment participating in forming SCE shall expire, on the one hand, in the case of termination of labour relationship or renouncing a function an, of the other hand, in the case of the death, renouncing a function or withdrawing recommendation by this organization

Portugal.- In the case of an SCE formed by way of merger, the SNB will have further additional members from each Member State as may be necessary in order to ensure that it includes, at least, one member representing each participating cooperative which has employees in that Member State and that will cease to exist as a separate legal entity with the merger.

However, there are two limits to the additional number of members: this rule does not apply to participating legal entities to which belong others with members of the SNB (in order to avoid a double representation of the employees concerned) and the additional numbers of members should not exceed 20 per 100 of the number of members designated.

If the number of participating cooperatives is higher than the total number of additional seats available, these ones should be allocated by decreasing order of the number of employees they employ. It may have been preferable to specify that the additional seats available should be allocated to participating cooperatives “in different members States” still it seems implied.

Each member of the SNB represents the employees of the participating company to which he belongs (the legal text does not mention the concerned subsidiary or establishment, although it should). If there is, in a Member State, any participating company, subsidiary or establishment of a participating company which headquarters are situated in another Member State with no representation in the SNB, the representation of their employees is assigned, in equal terms, to the members from that State. No further explanation is given by the legal text or by legal literature or jurisprudence. If there is, in a Member State, two or more members of the SNB from the same participating company, the representation of their employees is assigned, in equal terms, to these members.

Slovakia.- Allocation of the seats in the SNB shall be done in that way that it is clear how many employees are represented by concrete representative/member of the SNB. The representative/member of the SNB shall without undue delay after he was appointed or elected notify the SNB about number of employees he represents, and in which Member State and in which participating legal entities these employees are employed. If the number of employees in the participating legal entities shall change during the negotiations of the SNB with management organs in that way that allocation of seats does not correspond to the principles put down above, the new allocation of seats shall take place. The new allocation shall be done in the way, which minimally distorts original composition of the SNB.

Slovenia.- In order to calculate the number of employees in the SCE, account must be taken of the number of employees at the time of the publication of the proposal for the establishment of the SCE. If changes occur in the structure or number of employees of participating legal entities, concerned subsidiaries or establishments during the functioning of the SNB as to make it necessary to change the composition of the SNB, this one must be appropriately re-established. Management is obliged to immediately inform him of such changes, whereas the provisions regarding the primary formation of the SNB applies *mutatis mutandis*.

Spain.- The Spanish law establishes one more limit to apply the rule provided by art. 3.2.a.ii) SCE-Directive. In the case that amongst the elected or appointed members of a Member State there is a representative who is not an employee of any of the participating legal entities, SCE-Act establishes a presumptive rule according to which all participating legal entities employing workers in the State in question are represented in the SNB through the non-employed representative. This is, nonetheless, an *iuris tantum* presumption that may be overruled by way of an election or appointment act “that provides otherwise”.

The national law formulates two provisions that contemplate changes on the SNB. The first hypothesis is a change in the size, composition or structure of the organisational units of the SCE that affects “the number of seats” to be allocated in the SNB, “the distribution criteria” of the seats or “the representativity” of the body itself. In all cases, legislation conditions this new election to the mediation of one of the following two formal requirements: agreement of the SNB and a written request or petition signed by at least 10 per cent of the employees of the participating legal entities and their concerned subsidiaries and establishments, belonging to at least two establishments located in different Member States. Modification in the composition of the SNB must be considered to be an imperative provision, given the concurrence of conditions for its application in form and content. The second hypothesis affects to the loss of representative mandate at national level of a SNB member. As for the case above, the occurrence of this vicissitude is automatically associated to the reestablishment of the SNB. Together with this content requirement, a formal requirement has to concur: a request by at least 10 per cent of the employees or representatives of the companies and establishments “for which the member in question was elected or appointed to represent”.

Sweden.- SCE-Act states that if the number of employees in the legal entities and the participating subsidiaries change during the period in which the negotiation delegation is active and the change is in such a scale that it affects the distribution of the number of seats between the employees in the various Member States countries, a reallocation of seats shall be undertaken.

United Kingdom.- Regulation requires that appropriate adjustments should be made to the composition of the SNB, either if there are changes to the participating legal entities, which would alter their entitlement to seats, or if a member of the SNB is no longer willing or able to serve.

3.1.2.4 The functions of SNB

A. General considerations

1. The basic and essential role of the SNB, which justifies its creation, is negotiating with the competent bodies in the participating legal entities, responsible for the negotiation procedure, the content of the right to involvement of the employees within the SCE. Paragraph 1, art. 3.3 SCE-Directive so states it. In logical coherence with its basic role, the negotiation procedure concludes on the agreement on the involvement of employees. On the other hand, and with the aim of reaching this objective, paragraph 2 of this precept imposes upon the competent body the duty to inform the SNB "of the plan and actual process of establishing the SCE, up to its registration".

   Negotiation of the agreement on involvement constitutes the typical role of the SNB, but not the only one. Furthermore, the SNB may adopt another two decisions that may be qualified as atypical, alternatives to each other and with regard to reaching an agreement. Firstly, the SNB may opt for not open negotiations with the competent bodies of participating legal entities to lay down an agreement on the involvement of employees (paragraph 1, art. 3.6 SCE-Directive). Secondly, it may declare ongoing negotiations closed and submit to the provisions on information and consultation of employees in force in the Member States where the SCE has employees (paragraph 1, art. 3.6). Nonetheless, in order to safeguard another of the principles of the legal regulation on the involvement of employees within the SCE, the *"before-after"* principle, the SNB is banned from adopting any of these decisions when the SCE is established by means of transformation and as long as a system for the participation of employees is applied in the cooperative which is to be transformed (paragraph 3, art. 3.6). The majority required to decide not to open or to terminated negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of member representing employees employed in at least two Member States (paragraph 2, art. 3.6). Once reaching any of both decisions, the negotiation process is concluded. However, subsidiary provisions stated by national laws of transposition are not applicable.

   In any case, the SNB can only be re-established when requested by, at least, 10 per cent of the employees or the representatives of the SCE, its subsidiary companies and establishments, and only when, at least, two years have gone by since the decision was adopted. However, this temporal requirement is only a stipulation, not an imperative provision, in such a way that the SNB and the competent body may agree to open negotiations prior to this term. Given the case that once negotiations are resumed, before or after the two-year period, an agreement is not reached, SCE-Directive provided non-application of the subsidiary provisions (paragraph 4, art. 3.6).

2. The provisions explained earlier with regard to the roles that the SNB may play, have been transposed by the national legal systems with a similar wording and spirit

than the Community regulation. Or, expressing the idea in other words, very few legislations add these provisions in a secondary or collateral manner (Spain). And, similarly, few introduce legal disruptions (Malta and Hungary) that, in any case, must always be considered as minor. The reason for this imitative transposition may be probably found in the limited margin conferred in this sense by arts. 3.3 y 3.6 of the Directive, which state clear and precise mandates and, in general, do not require complementary provisions for their legal performance.

B. Analytical comments

Hungary.- The national law slightly deviates the negative statement of the Directive: in case of not opening or stopping negotiations "none of the provisions of the Annex shall apply." Instead, it states positively that "the provisions of the Labour Code shall apply to the information and consultation requirements in respect of the SCE's workers employed within Hungary".

Malta.-.The words "determine by written agreement" established by paragraph 1, art. 3.3 SCE-Directive are omitted in the national law. In order to facilitate the negotiation procedures, the measures which the management of the participating companies is obliged to take shall include the provision of all the relevant information about the identity of the participating companies, concerned subsidiaries or establishments, the number of their employees and any matters related thereto, to the employees' representatives of the participating company, its concerned subsidiaries and establishments, or if no such representatives exist, to the employees themselves. Such measures shall be taken within three weeks from the date of adoption of the project to create the SNB.

If this happens, the competent organs of the participating companies shall, as soon as reasonably practicable and in any event by not later than one month after the establishment of the special negotiating body, inform their employees and those of their concerned subsidiaries and establishments of the identity of the members of the special negotiating body.

Spain.- Spanish legislation has some provisions with regard to the development of negotiations started by the SNB that adds some rules to the Community regulation. Firstly, it establishes the possibility that the SNB and competent bodies in the participating legal entities of the SCE adopt, by common agreement, specific provisions regarding the chair of deliberations "or, given the case, other procedures agreed during the development of joint meeting sessions". Thus, the parties enjoy the freedom to agree what they deem necessary for this issue, with the possibility, for instance, of appointing an external chairman or to establish a rotation system between both parties. Secondly, the national law establishes with regard to the minutes of the meetings, an imperative mandate which provides that they will be signed "by a representative on behalf of each of the parties". In this sense, the expression "parties", designates the two parties attending negotiations: social and employers, represented by the SNB and the competent bodies in the participating companies, respectively.

3.1.2.5 The workings of the SNB

A. General considerations

1. The Directive states a set of provisions with regard to the workings of the SNB. From among this set, the most relevant provision is undoubtedly regards how agreements are

laid down within the SNB. However, the Community legislation establishes not only one provision for SNB reaching agreements; it provides two rules of a different nature. The first is conceived as the general rule; the second, as a special rule, the application of which is submitted to the closed list technique.

By virtue of the general provision, the SNB reaches agreements by an "absolute majority of its members" which, in turn, must represent "the absolute majority of its employees". Each member has one vote. This general provision is modified in certain cases where the majority required is larger; specifically, a two-thirds majority of SNB members, representing in turn two-thirds of employees and including the votes of members representing employees in, at least, two Member States. SNB decisions for which SCE-Directive requires a larger majority are three. We have mentioned before the two first ones; *id est*: not opening negotiations in view of reaching an agreement of involvement and terminating ongoing negotiations, agreeing to submit to provisions of information and consultation of employees in force in the Member States where the SCE has employees (art. 3.6). We must add now one more: reduction in the employees´ participations rights (paragraph 1, art. 3.4).

In this sense, Community legislation has proceeded to regulate effective content to the notion of reduction of participation rights, understanding this to be the establishment of a proportion of members of the organs of the SCE within the meaning of art. 2.k "that is lower than the highest proportion existing within the participating legal entities". Additionally, SCE-Directive defines the two cases in which the reduction of participation rights are specified. Pursuant to the provision contained in paragraph 2 of art. 3.4, the SNB will require a reinforced majority in the following two hypothesis of reduction of participation rights: i) in the case of an SCE to be established by way of merger, "if participation covers at least 25 % of the overall number of employees of the participating legal entities" and, ii) in the case that an SCE is established by any other way, "if participation covers at least 50 % of the overall number of employees of the participating legal entities".

Besides the provisions on reaching agreements, SCE-Directive establishes other provisions with regard to the workings of the SNB. On the one hand, the SNB may decide to supply information "the representatives of appropriate external organisations, including trade unions, of the start of the negotiations" (art. 3.5, *in fine)*. On the other hand, the European regulation provides that, "for the purpose pf negotiations, the SNB may request experts of its choice, for example representatives of appropriate Community level trade union organisations". The objective of the experts is "assist the SNB with its work". Therefore, they may be present at negotiations meetings in an advisory capacity "to promote coherence and consistency at Community level" (art. 3.5). Finally, the Directive establishes two provisions regarding the costs of SNB. The first has a material nature and its legal structure is open. Specifically, the paragraph 1, art. 3.7 provides that expenses relating to the functioning of negotiations "shall be borne by the participating legal entities, so as to enable the SNB to carry out its task in an appropriate manner". The second provision, however, has a formal nature as it enounces an option for the national systems In these sense and in accordance with paragraph 2 of the abovementioned article, the domestic laws "may lay down budgetary rules regarding the operation" of SNB. The Directive's precept concludes by pointing out that national legislations may also limit funding to cover "one expert only".

2. The transposition of sections 4, 5 and 7 art. 3 of the Directive by the Member States has responded to certain common principles, translating the different nature and scope of the provisions established in these precepts. First, the provisions regarding the SNB reaching agreements (art. 3.4), both the general and special rule in cases of reduction in the right to participation, define quite precisely both the cases and the legal consequences; thus, national legislations hardly have room for regulation. In this legal context, it isn't strange that most of the European legal systems have undertaken an almost literal transposition of the Community text. Only one legislation introduces some secondary-nature differences which can be explained from the singularities of the scheme for the right to participation of employees in its specific legal system. I refer to the German legislation.

   The nature of the legal statements contained in sections 5 and 7 of aforementioned art.3 of the Directive are quite different. The internal structure of these provisions obeys to the more traditional legal principles of a directive; that is, it sets out to guarantee a specific useful effect, allowing national transposition laws to choose between several alternatives. The issues we are concerned with here are the presence of experts in the SNB and the expenses of running the SNB; these issues offer the most diversified legal treatment from national legislations.

   Nevertheless, this diversity is only moderate or relative, with convergences being more relevant than divergences. Firstly, most of the transposition laws have made use of the capacity established at the end of para. 2 art. 3.7, limiting to one expert the funding covered by participating legal entities of the SCE, unless a more favourable agreement is reached, which is sometimes established expressly (Belgium). Only a few countries have not had recourse to this option (Germany, Latvia and Sweden).

   On the other hand, and with regard to the expenses of the SNB being borne by the participating companies, the development of this provision in national legislations follows two basic models. In the first, participating legal entities must bear the running expenses that are reasonable (Malta, Estonia and United Kingdom), essential (Netherlands), necessary (Sweden), justified and necessary (Hungary) or appropriate (Austria, Demnark Finland, Latvia and Slovenia). The criteria to define reasonable, essential or necessary become, in this way, an assessment of the economic load imposed on these companies. On the other hand, in the second model, national laws list the different concepts that constitute the running expenses of the SNB; normally, this will be an indicative or open list (Belgium, Cyprus, Italy, Lithuania, Poland, Portugal, Slovakia or Spain). Some transposition laws (Czek Republic and Germany) include both models, establishing a general clause with a specific list of expenses that, in any case, shall be borne by the companies. The SCE-Directive does not establish a criterion to share these expenses between the participating companies. This omission is maintained in most national laws, with some exception (Poland and Portugal). Therefore, it is the cooperatiove' competence to agree the manner of distribution they deem appropriate; for instance, profit turnover volume or number of employees in each.

   Lastly, and on a different note, only a few legislations establish additional rules on the organisation of the SNB. This reduced group includes Lithuania, Poland, Slovenia, Spain and United Kingdom.

B. Analytical comments

Austria.- The participating companies have to provide the operating requirements, appropriate to the size of the SCE and the needs of the of the SNB, free of charge. Also the administrative expenses for the proper completion of the task of the SNB, especially the operating costs for the conference and the preparing meetings, including the expenses for interpreters and the costs for at least one expert as well as the cost of room and board and the travelling expenses for the members of the special negotiating body, have to be borne by the involved companies.

Belgium.- The SCE-Directive does not provide a right to preparatory meetings of the SNB to be held without the management of the participating companies. In this regard a provision which echoes Part II d) of the standard rules is absent. Article 14 CC88 established a right to preparatory meetings. The holding of such a meeting is made subject to the approval of the management of the participating companies. This provision does not make the exercise of the freedom of assembly subject to managerial consent. Its scope is financial. In case of consent, it goes beyond doubt that management will have to bear the costs. Furthermore, it can be argued that consent cannot be denied in a discretionary let alone an arbitrary way. Such an attitude would go against the spirit of co-operation.

Cyprus.- The participating legal entities are incurred with the expenses of the functioning the SNB. More specifically, participating legal entities undertake the following expenses: election of the members of the special negotiating body, the organisation of the meetings of the special negotiating body, with the inclusion of the expenses for interpretation, accommodation, travelling expenses, maintenance of its members, and expenses of printing and notification of the results of the negotiations and the use of services of an expert from the special negotiating body provided it will assist this body in its duties.

Estonia.- SCE-Act provides that any reasonable expenses relating to the formation or functioning of the SNB and to negotiations with participating legal entities shall be borne by the participating legal entities so as to enable the SNB to carry out its task in an appropriate and unhindered manner. If an expert is involved on the initiative of the SNB, the participating legal entities shall compensate for the expenses of inviting of at least one expert.

Germany.- The German law contains some particular features with regard to reaching agreements. The first of these affects the way to calculate the threshold value for the implementation of the special rule on reaching agreements. Pursuant to the Directive, the two threshold values contemplated in art. 3.4 (25 per cent and 50 per cent) are calculated with regard to “the overall number of employees of the participating companies”. German law, however, enlarges the business scope of calculation, affecting both participating companies and concerned establishments. The second feature lays in the concept of the right to participation, which must include the exercise of these rights “in a European company’s group undertakings”.

According to the German Codetermination Act of 1976 (*Mitbestimmungsgesetz* 1976), the employees of all subsidiaries are entitled to vote for some of the members of the holding company’s supervisory organ. In so far the German provision corresponds with the legislative spirit of the Directive (the before after approach and the protection of existing rights) and is therefore compatible with Community Law. The participating German companies are subject to *Mitbestimmungsgesetz* and, so, they are protected by the threshold

values as participating companies. Finally, the German provision aims not only to the *reduction* of the proportion of employee representatives on the supervisory or administrative organ of the SCE but includes any other restriction of the right to elect, appoint, recommend or oppose members of the supervisory or administrative board.

Besides what we have stated above, German legislation develops art. 3.7 of the Directive by a disintegration of both models. On the one hand, undertakings must finance the essential running expenses of the SNB. However, on the other, it defines the following, as the essential expenses regarding "premises, material resources, interpreters and clerical staff required for meetings", and "travel and subsistence expenses of the members of the special negotiating body".

Ireland.- The draft Regulation established that the participating companies in the SCE meet any costs of the SNB, includes the cost of elections of the employees´representatives.

Italy.- Unless otherwise agreed, the SCE shall bear the cost of organising meetings and providing translation facilities and accommodation and travelling expenses of members of SNB.

Lithuania.- The SNB shall have a right to convene in meetings before the start of the negotiations with the competent organ of the participating companies or before each negotiating meeting with it. A meeting of this kind of the SNB may not last longer than a day. With the consent of the competent organ of the participating companies, the SNB may hold meetings more often and/or for a longer time. The participating companies shall provide premises and working tools for the meetings of the SNB and ensure translation and the proper organisation of the meeting. The meetings of the SNB shall be closed, unless it is decided otherwise. Minutes shall be taken of the meetings of the SNB. The minutes of the meeting shall be signed by the chairperson of the meeting and the authorised member of the SNB.

All the expenditure related to the formation of the SNB and the participation of its members in the meetings of the committee or its negotiations with the competent organ of the participating companies shall be covered by the funds of the participating companies on their agreement. Such expenditure shall include the costs of travel, insurance of health and life, accommodation and subsistence. The legislation provides a procedure for the reimbursement of these expenses.

Netherlands.- The SNB has the right to seek assistance from experts.. On request of the SNB, the expert is allowed to be present at the negotiation meetings with the participating legal entities. The costs relating to the functions of the SNB are taken by the participating legal entities. This only applies to the costs of experts when the participating companies have been informed about these costs.

Poland.- Polish Act stipulates that the companies participating in the SCE establishing convene the first meeting of the SNB within 14 days since the day of its creating. The objective of the meeting mentioned above is to elect the chairman of the SNB among its candidates and to adopt its rules of procedure.

SCE-Act states that any expenses relating to the establishing and functioning of the SNB shall be borne by the participating entities. Polish legislator provides for the following rules:

i) the costs of business trip of the members of the SNB shall be borne by the participating entity; it concerns the members being or not being employees of mentioned entity, its concerned subsidiary or establishment who were appointed or elected by employees of one of these organizational units; ii) the remaining costs are borne by the participating legal entities in proportion to the number of employed workers, including workers employed by its subsidiaries and establishments.

Portugal.- The accommodation and travelling expenses can be paid accordingly to the system applicable in the subsidiaries or establishments where the employees' representatives work. Still, they can't treat any member of the SNB less favourably. The funding to cover the expert can be regulated by the rules applicable to the members from the same Member State. The participant companies support the expenses concerning the expert in proportion of their employees' number.

The costs referring to each member of the SNB are supported by the participating legal entities he belongs to or from which subsidiary or establishment he comes from. If the member of SNB does not belong to any participating company, subsidiary or establishment, the costs are supported by the participating legal entities which employees he represents in proportion to the number of their employees.

Slovakia.- Participating companies shall provide for sufficient financial funds, material sources and organisational precondition for the appropriate performance of the tasks to the SNB and its members. Members of the SNB are entitled especially for compensation for the expenses. Participating companies shall in advance set aside (from the determined budget) relevant financial sources for compensation of costs needed especially for organisational arrangement of the negotiations of the SNB, as translation costs, travel expanses, accommodation, meals expanses and costs for experts.

Slovenia.- For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of trade unions at European-Union level, to assist it in its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body. The special negotiating body may decide to inform the representatives of appropriate external organisations of the start of the negotiations. *All costs* relating to the negotiations and the operation of the special negotiating body are to be borne by the participating legal entities. Notwithstanding this, participating legal entities are obliged to bear the *costs of only one expert*, who assists the SNB in its work.

Spain.- The Spanish law establishes some provisions with regard to the workings of the SNB which go beyond SCE-Directive. Firstly, it confers to the SNB the capacity to pass internal regulations with regard to its own workings, such as appointing a chairman from amongst its members. Secondly, national law recognises to the SNB the right to meet prior to any meeting with the competent bodies of the participating companies, "without the presence thereof", a provision which has a consequence on the scheme of expenses of the SNB, as will be noted later. Thirdly, the SNB is obliged to supply information "on the process and the results of negotiation" to the trade unions that, in each Member State, have participated in the election or appointment of the members of the SNB. With regard to this duty of the SNB, national law does not establish a periodicity for the supply of information. The content of the information will deal with the process and the results.

The national law specifies the minimum expenses that must be borne by the participating companies. It must cover expenses derived from the election or appointment of members of the SNB and expenses of the organisation of SNB meetings, including translation, allowance, accommodation and travel expenses of its members.

Sweden.- SCE-Act states that the legal entity shall cover expenses to the extent that is necessary for the negotiating body to carry out its tasks in an appropriate way.

United Kingdom.- Article 3.5 SCE-Directive on experts is transposed by Regulation. However, the UK wording makes no reference to the example provided in the Directive that these experts might come from "appropriate Community level trade union organisations". Nor does it refer to the promotion of "coherence and consistency at Community level". It states only "for the purposes of negotiations, the special negotiating body may be assisted by experts of its choice".

The Regulations do not refer to informing "representatives of appropriate external organisations, including trade unions, of the start of the negotiations". The national law requires management - "the competent organs of the participating legal entities" - to inform their employees at the latest within a month of the "identity of the members of the special negotiating body".

3.1.2.6 Duration of negotiations

1. The SCE-Directive dedicates its fifth article to the duration of negotiations aimed at reaching an agreement on the involvement of employees. There are two provisions contained in this precept. The first is a general-scope provision, and the second provision allows the parties to repeal the former provision. Paragraph 1, art. 5 provides that negotiations "shall commence as soon as the special negotiating body is established and may continue for six months thereafter". Nevertheless, paragraph 2 declares that, by joint agreement, the parties may extend negotiations "up to a total of one year", from the establishment of the SNB.

2. Most of the national laws of transposition reproduce, often word-for-word, the content of art. 5 of the SCE-Directive, as mentioned earlier. Nevertheless, a few systems specify the *dies quo* from which the six-month term must be counted, established by SCE-Directive as a general rule. In this sense, some domestic laws clarify that the date *a quo* coincides with "the first meeting of the SNB" (Lithuania, Netherlands, Poland or Slovenia), expression which is equivalent to the expression used in the Community regulation.

   However, this is not the only formula. German legislation establishes that the expression used in the Directive, the date of establishment of the SNB, refers to the date on "which the management bodies issued invitations to the constituent meeting of the SNB". Maltese law establishes that the date on which the six-month negotiation period starts to count is one month after the date on which all members of the SNB are elected or appointed. Finally, Spanish legislation states that, given the case that the SNB is not established on "grounds attributable to employees' representatives", having the employers' side complied with "their obligations towards the establishment" of the negotiating body, the six-month term will count "from the date on which the negotiating body could have been validly established".

The Lithuanian legislation provides the content of the notification of the "first meeting" of SNB. In this sense, the notification shall include: i) the name of the establishment or subsidiary or of the natural person employing the member(s) of the SNB who was invited to the negotiating meeting; ii) the first and last name and the title of the member(s) of the SNB invited to the negotiating meeting; iii) the date, time and venue of the negotiating meeting; iv) the agenda of the negotiating meeting and v) the time limits and procedures for the reimbursement of the expenditure of the members of the SNB for travel, health and life insurance, accommodation and subsistence.

3.1.2.7 The agreement on involvement

1. Once the SNB is established and within the period provided as ordinary or extraordinary duration, the social partners open negotiations aimed towards reaching an agreement regulating the involvement of employees in the SCE. Pursuant to art. 4.1. SCE-Directive, the parties shall negotiate "in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SCE".

   All national laws transpose this mandate, sometimes literally and sometimes with slight alterations. For instance, sometimes the expression *spirit of cooperation* is substituted, adapting it to a language that is more suitable to the domestic legal traditions. In this sense, Hungary and Spain state that the parties must negotiate in *good faith*, a notion which equivalent to the expression used in the Community regulation. In some systems, the transposition regulation does not expressly mention that the aim of negotiation is to reach an agreement (Sweden). In the application to this specific national context, this omission is of no substantial relevance, because all the principal provisions of the SE-Act are with regard to this aim implicitly.

2. Article 4.2. of the SCE-Directive states the issues that must be dealt with, "without prejudice of the autonomy of the parties", by the agreement on involvement, constituting what may be qualified as the "minimum content" of the agreement on involvement. A first group of these issues (scope of implementation of the agreement, the date of entry into force and duration thereof) has no other aim but to ensure the identity of the agreement as a regulating pact regarding the right to involvement. A second, larger group of issues, on the other hand, mentions aspects regarding the content of the agreement, such as the attributions and competences of the bodies of representation, financial and material resources assigned to this body or provisions on participation. In any case, neither group sets substantial provisions, as the Directive's objective is not to set minimum rights but to ensure that the agreement regulates these issues.

   On the other hand, not all the issues mentioned in art. 4.2 have to be compulsorily included in the agreement. Specifically, it is compulsory to include: i) in any agreement of involvement, the issues established in sections a) and h); ii) the issues established in sections b), c), d) and e) are compulsory mentions, but alternative to the issue appearing in section f). It corresponds so to the agreement itself to decide the manner of involvement chosen freely: either by the body of representation, in which case the agreement must include the issues mentioned in sections b), c), d) and e), or by procedures of information and consultation, in which case the agreement includes only the references of section f); iii) finally, the obligation to include aspects stated in section g) is only effective in the case that the parties have agreed to establish arrangements for participation.

Most of the national laws have transposed art. 4.2 of the Directive mechanically. This mimesis can be seen in a double sense. On the one hand, and from a formal perspective, transposition is carried out following the model of the Community regulations; that is, reproducing the list of issues that may be included in the contents of an agreement on involvement, in a single provision and with same systematic order. On the other, and from a material perspective, the transposition copies the Community language with no significant alterations, adaptations or additions.

Nevertheless, some of the transposition regulations do not rigorously follow this common pattern. A first group of laws break the formal unity of art. 4.2, dealing with the different issues that form the content of the agreement in different paragraphs or articles. In this sense, Germany deals separately with the contents of employee involvement (art. 4.2.g Directive). Portuguese and Slovak legislations follow a similar criterion, including general references (sections a), c), d), e) and h) art. 4.2) in one article and in another, mentions to the body of representation and to the procedures of information and consultation, on the one hand, and to the right to participation, on the other (Portugal), or in a more limited manner, to the information and consultation procedures and the right to participation (Slovakia). Sweden separates the content into four articles, though the content in the articles follows the order of the content in art. 4.2 of the directive and almost the same wording is used.

A second group of laws undertake enlargements or adaptations in the list of mentions that the agreement must include. Within the additions, the following may be mentioned: "the identification of the arranging parties" (Spain) and "the duration of the term of office of members of the representative body and the effects that may be derived from modifications in size, composition or structure of the SCE and its subsidiaries or in the composition of national bodies of employees' representation" (Spain). The British Regulation does not include any mention regarding the renegotiation of the agreement on involvement, from section h), art. 4.2.

3. Regardless of the freedom that the parties have, within a respect for the compulsory content, to negotiate what they deem most suitable to their interests, the SCE-Directive adds a new rule that complements those mentioned until now. The function of this new provision is to set limits to the autonomy of the parties' intentions. In this sense and as we have pointed out before, one of the regulation principles of the SCE-Directive regarding the involvement of employees in the SCE is the "before-after" principle. Without entering an explanation of the meaning and scope of the principle, what must be highlighted is that art. 4.4 of Directive provides a manifestation of this principle by establishing a clear limitation in the contractual freedom of the parties. Pursuant to this principle, in the case that the SCE is established by way of transformation, "the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the cooperative to be transformed into an SCE".

   National laws transpose this limiting provision word-for-word. The only singularity can be found in German legislation, which implements this provision not only in the case established by the Community regulation, that is, in the creation of an SCE by way of transformation, but also in a second hypothesis; *id est*, "where the cooperatives witches from a dualistic to a monistic management structure, or vice versa".

4. One of the principles of the legal regulation of the involvement of employees is the close connection between the establishment of an SCE and the employees' right to involvement. SCE-Directive, following the model introduced by Directives 94/45/EC and 2001/86/EC in their day, has articulated two ways by which to set the involvement of employees. On the one hand, the conventional path represented by the negotiated agreement between the SNB and the competent bodies in the participating companies; on the other, the legal path, specified by way of measures of information, consultation and participation established by the national legislations of the Member States developing the standard rules set in the Directive itself. However, these paths are not in a state of parity with regard to implementation. On the contrary, the Community regulation has conferred preference to the implementation of the agreement over the legal system of involvement. This preference is stated in art. 4.3, by which "the agreement shall not, unless provision is made otherwise therein, be subject to the standard rules established in the Annex". Therefore, SCE-Directive establishes the agreement, and not national law, as the instrument to repeal the general provision that determines non-application of standard rules when an agreement has been reached.

   Practically all national laws have transposed this provision literally. Only the Spanish law differs in this common direction, as it establishes the provision regulating the legal scheme of the representative body as the additional provision, not only when no agreement has been reached, which would not be reproachable, but, quite differently, when the agreement "contains no specific provisions therein".

5. Art. 59.4 Regulation (EC) 1435/2003 establishes a specific modality for the involvement of employees' representatives in the SCE which consists of the right to vote at general, sectoral or section meetings. Also, art. 9 SCE-Directive includes this specific course of involvement, subject to certain circumstances. This form of participation and its regulation in Community and national legislations will be analysed in another section below. What we must emphasize at this point is that art. 4.5 SCE-Directive, in legal coherence with the provisions established in art. 9.1 thereof, establishes that the agreement on involvement may specify "the arrangements for the entitlement of employees to participate in the general meetings or in the section or sectoral meetings".

   The possibility conferred to the agreement on involvement, pursuant to art. 4.5 SCE-Directive, to specify the arrangements abovementioned, has not been transposed in a majority of cases, with a balance between those Member States that have not used this option (Cyprus) and those that have (Czech Republic, Malta and Spain). In especial case is Denmark, which SCE-Act repeats practically verbatim art. 9 SCE-Directive.

6. One of the most relevant issues omitted in SCE-Directive is with regard to the enforceability of the agreement on involvement. Most probably, this omission is the result of the significant heterogeneity which national legislations in the EU countries offer to tackle and deal with this issue. In this context, SCE-Directive, as other Community regulations before it, especially Directives 94/45/EC and 2001/86/EC, opts to silence the issue and not resolve it, which is equivalent to leave its treatment to national legislations and practices. Furthermore, besides this omission, and probably due to the aforementioned reason, the Community regulation does not establish formal requirements which the agreement on involvement shall be subject to compulsorily or under penalty of nullity.

As a general rule, national transposition laws do not expressly define the scope of this agreement; hence, this is an issue that is referred to the current legislation in each Member State. However, and as an exception, some legislations bestow a general or *erga omnes* scope upon the agreement; that is, its implementation is binding to all establishments within the SCE and its subsidiaries that are included in its scope of implementation, as well as their respective employees, during the period in which it is enforced (Ireland, Poland and Spain).

Apart from this, some national laws establish formal requirements such as the written form of the agreement (Estonia, Finland, Ireland, Lithuania, Portugal, Poland or Spain), the obligation to deposit the agreement at the administrative authority (Portugal or Spain) and, finally, the requirement that the agreement is duly signed by the authorised person (Lithuania), by representatives of the legal entities and members of the SNB who voted in favour of the agreement (Estonia) or by the competent organs of the participating legal entities nd by member of the SNB and this signature must be noted in the minutes of meeting (Ireland)

3.1.2.8 Legislation applicable to the negotiation procedure

Article 6 of SCE-Directive establishes that, "except where otherwise provided in this Directive, the legislation applicable to the negotiation procedure provided for in articles 3,4 and 5 shall be the legislation of the Member State in which the registered office of the SCE is to be situated". This article is one of the main provisions and, given the preceptive nature with which it is stated (the legislation <...> shall be the legislation <...>), national transposition laws have no capacity for innovation. Its role is thus limited to act as a complement to the Community provision. In this sense, and as an example, Italian legislation provides that, if the SCE is registered in Italy, the administrative office must coincide with the registered office.

3.1.3 Standard rules

3.1.3.1 Field of implementation

1. SCE-Directive has transferred the institutional architecture presented in Directive 94/45/EC to the sphere of the SCE, establishing two axes for regulation, that are related univocally and not reciprocally: the second appears when the first has failed. These axes are collective agreement, analysed above, and accessory provisions, that play the role of supplementary rules. The legislation that defines the scope of implementation of the standard rules is the national legislation of the country where the registered office of the SCE is located. These provisions are active from the date of registry of this entity, once the circumstances that are expressly established concur. Article 7 SCE-Directive defines the field of application of the standard rules, stating a general rule and several special rules that are applicable to issues of participation.

   Under the general provision, standard rules are applied at the wish of the parties (*when the parties so agree,*<7.1.a>) or default on agreement (*no agreement has been concluded <art. 7.1.c>*). This last cause, however, does not become active automatically. In addition, the simultaneous concurrence of two requirements is necessary. Firstly, the decision of the employers' at the participating companies to continue with the procedure to register the European Cooperative Society and, hence, accept the implementation of the standard rules. The SCE-Directive, in this way, confers the managing bodies of each

of the participating legal entities the capacity to reconsider the project of creating a transnational body, which is, therefore, established as a reversible project. The second requirement is that the SNB has not laid down an agreement with the reinforced majority that is legally established, has not started negotiations or terminates ongoing negotiations, submitting the regulation of the rights to information and consultation to the national provisions enforced in the countries where the SCE has employees (art. 3.6).

Besides this general provision, SCE-Directive establishes special provisions for the implementation of standard rules regarding participation. The content of these second provisions is not uniform: they differ with regard to the modality used to establish the SCE. Firstly, when the SCE is established by way of transformation, "if the rules of a member State relating to employee participation in the administrative or supervisory body applied to a cooperative transformed into an SCE", prior to registration of the SCE (art. 7.2.a). In the case of an SCE established by way of a merger, standard rules will be enforced when participation rights (*one or more forms of participation*) were applied in one or more of the participating cooperatives, prior to registration of the SCE, and as long as these rights affected, at least, 25 per cent of the total number of employees employed by them. However, when this threshold is not reached, these standard rules may also be applied "if the special negotiating body so decides" (art. 7.2.b). With regard to the establishment of an SCE by any other way, the rules that define the implementation or not of standard rules on participation, are similar to the case of a merger, with the sole difference that the threshold for the number of employees affected rises to 50 per cent of the total number of employees in all participating legal entities. A level that is equal or higher to this threshold activates standard rules on participation automatically; a lower level prevents their implementation, except when a decision is reached by the SNB otherwise (art. 7.2.c).

The last paragraph in art. 7.2.c of the Directive states a closing clause that is applicable to all modalities in the establishment of the SCE, with the aim of solving possible conflicts arising from preserving participation rights of a different nature. In that case, the SNB shall decide which of the different forms of participation must be established in the SCE. However, the SCE-Directive confers national transposition regulations the ability to set, in addition, the modality that is applicable when no negotiation decision is reached.

2. The regulation of provisions regarding the scope of implementation of the standard rules established in the SCE-Directive has been transposed in a literal manner by practically all Member States. Nevertheless, there are some exceptions.

   German legislation, once again, modifies the functional scope to calculate the threshold values, established in sections b) and c) of art. 7.2. Whilst the SCE-Directive calculates these values considering all the participating legal entities, the german legislator use the same mechanisms as for the companies, to taking account all the employees of the group (including concerned subsidiaries). According to the *Mitbestimmungsgesetz*, the employees of all subsidiaries are entitled to vote for some of the members of the cooperative society's supervisory organ. The German legislator made use of the space left to the discretion of the Member States to compose codetermination in the SCE into the prevalent practices of codetermination existing in Germany. Insofar as the German provision corresponds with the legislative spirit of the Directive (the before after

approach and the protection of existing rights) it is, therefore, compatible with Community Law.

The Cyprus SCE-Act has not incorporated the provisions of art. 7.2.b. SCE- Directive This effectively means that less protection is afforded as the threshold is 50 per 100 of the total number of employees for all forms of establishment of an SCE other than by transformation. In UK, there is no specific reference to an SCE established by transformation. However, this is logical in the light of the wording of Article 7.2 (a). This states that the rules relating to transformation only apply "if the rules of a Member State relating to employee participation in the administrative or supervisory board applied to a cooperative transformed into an SCE". The UK has no national rules on employee participation at board level and a UK cooperative transforming itself into an SCE would therefore not previously have been governed by national rules relating to employee participation.

On the other hand, no Member State has used the *opting out* clause established in art. 7.3 of the Directive. Therefore, in the case of an SCE established by way of merger, the standard rules established by legislation at the registered office of the European Cooperative Society will be applicable.

3. Given the case that there is a number of forms of participation and the SNB has not chosen the applicable form, the last paragraph in art. 7.2 refers the solution of the conflict to the decision of national law, which can dictate a substitution rule. Most of the transposition laws (an exception is United Kingdom) have used this capacity, introducing disparate criteria. In this sense, Finland and Sweden choose to place upon the participating companies' competences the election of the applicable participation system. The Hungarian and Czech laws state the applicable system of participation to be the one that is more advantageous to employees. And in the Dutch regulation, the applicable participation system is the system established in the standard rules of the Dutch law. This is the so-called *structure regime*, which gives works councils the right to nominate members of the supervisory board. In other cases, that is, when there are stronger forms of participation in the participating legal entities, these forms apply. However, the most common rule considers the applicable participation system to be the one established for the largest number of employees in the participating companies (Germany, Latvia, Portugal and Spain).

3.1.3.2 The Representative Body

A. General considerations

1. In those cases where the causes that determine the implementation of standard rules concur, Annex 1 and 2 of SCE-Directive contain some provisions about the constitution and functions of the Employees' Body of Representation (hereinafter, RB). Annex 1 and 2 focus the regulation of RB on three thematic areas: composition, competences and functioning.

   To start with the first area, Annex 1 states that the RB will be made up of employees within the SCE and its establishments and subsidiaries, "elected and appointed by and amongst employees' representatives or, in the absence thereof, by the entire body of employees (section a). The election or the appointment of members of RB "shall be carried out in accordance with national legislation and/or practice" (b), sub. 1,). And it

belongs to each Member State to lay down rules to ensure that the number of members of, and allocation of seats on, the RB is adapted to take account of changes occurring within the SCE and its subsidiaries and establishments. In any case, the methods use to nominate, appoint or elect employee representatives "should seek to promote gender balance" (b), sub. 2). Members of the RB are elected or appointed in proportion to the number of employees within the SCE and its establishments and subsidiaries in each Member State, "with one seat for every 10 per cent or fraction thereof of the number of employees, per Member State" in all Member States (section e). The competent organ of the SCE shall be informed of the composition of the RB (section f).

Four years after its establishment, the RB will have to decide whether or not it starts negotiations in view of reaching an agreement on involvement and must communicate this decision to the competent body in the SCE. In the case that the negotiating process is opened, the role of the negotiating agent falls on the RB, which takes on the competences conferred by legislation to the SNB. (g) sub. 1). During the course of negotiations and until the conclusion thereof, the RB continues to fulfil its roles. If negotiations are not opened, standard rules will continue to apply during the following four-year period (g), sub. 2). Nevertheless, the RB and the competent body of the SCE may agree, by common consent and at any time.

From a general perspective, the competences of the RB are substantiated in the right to information and consultation, "limited to questions which concern the SCE itself and any of its subsidiaries and establishments situated in another Member State or which exceed the competences of the decision-making organs in a single Member State" (Annex 2, a).

In order to ensure the exercise of this competence, Annex 2 of SCE-Directive grants the RB the right to hold a meeting with the competent body of the SCE at least once a year, "on the basis of regular reports drawn up by the competent organ of the progress of the business of the SCE and its prospects" (b), sub. 1). The community law also imposes a duty to the latter, the competent body of the SCE, to provide the former, the RB, both the minutes of the meetings of the administrative body, or given the case, the supervisory body, and "copies of all documents submitted to the general meeting of its shareholders" at least one month in advance (b), sub. 2). Annex 2 SCE-Directive identifies, by means of an open list technique the issues that must be the object of joint analysis in the annual meeting between both bodies. Indeed, the list is made up of the following issues: "structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishment of important parts thereof, and collective redundancies".

In addition to the above, Annex 2 establishes that the RB must also be informed in advance of those exceptional circumstances that affect the interests of employees considerably, especially in the events of relocations, transfers, the closure of establishments or undertakings, or collective redundancies (c) sub. 1). With the aim of receiving this information and being consulted on other issues, the RB has the right to meet, at their request, with the competent body of the SCE or any other more adequate level of management with decision-making competences (c) sub. 2). Given the case that

the management body decides not to follow the opinion expressed by the RB, the latter has the right to meet again with the competent body of the SCE in view of reaching an agreement (c), sub. 3). In any case, these meetings do not affect the prerogatives of the competent organ (c, sub. 4)

The last issue relating to the RB which is regulated by SCE-Directive is its functioning. In short, the aspects regarding the workings of the RB are the following: i) reaching agreements; ii) possibility of building a restricted council and the organisation and competences thereof; iii) appointment of experts; and, iv) financing of expenses regarding the functioning of the RB.

The RB adopts its agreements by the majority of its members, with full competences to elaborate and approve its own internal working regulations (Annex 1, d). "Were its size so warrants", the RB shall elect a select committee (SC) from among its members, comprising at most three members (Annex 1, c). Thirdly, the Community regulation grants two rights to the RB and the SC: the right to meet prior to the meetings organised with the competent body of the SCE (Annex 2, d), sub. 2) and the right to be assisted by experts of their choice (Annex 2, f). SCE-Directive acknowledges RB members the right to "time off for training without loss of wages" (g). At the end, the mentioned Annex 2 provides some rules about financing the RB. On the one hand, it enounces a general rule according to which "the cost of the RB shall be borne by the SCE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner (h) sub. 1). On the other hand, it develops this general rule, declaring that the SCE, unless otherwise agreed, bears the cost of organising meeting and providing interpretation facilities and the accommodation and travelling expenses of RB and SC (h), sub. 2). Finally, the Directive repeats the same provision established for the expenses to the SNB: the Members States may lay down budgetary rules regarding the operation of RB and, in particular, may limit funding to cover one expert only (h), sub. 3)

2. The legal structure of the standard rules that regulate the RB do not obey to a single criterion; quite the opposite, they respond to a plurality of criteria. Most especially, there are three types of legal structure of the standard rules.

   With regard to a first group of provisions, the role sought by the SCE-Directive is not the harmonisation but the unification of national legal systems. Hence, national transposition laws have no autonomy in regulation and are obliged to mechanically reproduce, in an almost literal manner, the specific mandates established in the Community regulation. In a non-exhaustive manner, the following rules, amongst others, respond to this logic: sections e), f) and g) of Part 1 of the Annex, as well as sections b) and c) of Part 2 of the Annex.

   Secondly and in other instances, the SCE-Directive seeks a convergence or approximation effect between the legal systems of Member States, which is the characteristic effect of Directives (or, at least, of a first generation of Community Directives). Nonetheless, the objective of convergence is not only articulated through the classic differentiation between means and aims; it is also articulated through a technique that is perhaps less complex, that may be denominated complementarity relationships, and is repeatedly used in national laws. Specifically, Annex 1, b), sub. 2 constitutes a good example of the search for harmonisation by means of a more traditional path in

Community Law. This paragraph states an aim (to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SCE and its subsidiaries and establishments), allowing the Member States to choose the means to achieve this aim: *"Member States shall lay down rules to ensure".* Pursuant to the second technique, the SCE-Directive establishes a basic rule, which national regulations must complement, facilitating its legal application. Sections c) of Annex 1 and g) of Annex 2, illustrate in exemplary fashion this second technique of approximation to legislations. The basic rules established by these precepts are the election by the representative bodies of a select committee comprising at most three members, and the entitlement of members of the representative body to time off for training without loss of wages. However, both of these rules are formulated in an incomplete fashion, and it is the national legislations' competence to dictate complementary rules; that is, deciding in what cases *the size* of the representative body justifies the election of a select committee (Annex 1, c), and to what extent is the representative body members' entitlement of this time off *necessary for the fulfilment of their tasks* (Annex 2, g)).

Finally, with regard to a third group of issues, the SCE-Directive does not intend to subject them to a uniform regulation nor submit them to a principle of approximation; their aim is to preserve the national rule, with all of its consequences. Hence, the Community Directive refers the legal regulation of this specific issue to the full legal competence of the Member States.

The previous considerations offer a good method to examine the degree of suitability of national transposition laws to the rules established in Annex 1 and 2 of SCE-Directive. The purpose of the following observations is twofold. On the hand, we shall try to verify the degree of compliance of national laws to the objective of unification; on the other, we shall try to determine the way in which national legislations satisfy the useful effect required by the Directive or, given the case, complement the basic rules established by the Directive.

3. In general terms, the transposition of national legislations of Annex 1 and 2, comprising the Standard Rules, has been correct, with no irregularities detected that may be considered to be serious or severe. However, some omissions may be appreciated. In this sense Portugal and United Kingdom do not contemplate the right of members of the representative body to take time off for training without loss of wages. Latvia does not mention the SC. And some Member State (United Kingdom) does not ensure the adaptation of the composition and allocation of seats of the representative body to changes occurring in the SCE, its subsidiaries and establishments. Practically no transposition laws establish measures to guarantee the promotion of the principle of gender equality in the election or appointment of the RB. The SCE-Acts of Ireland (draft) and Lithuania are a good exception.

   National laws do not establish a uniform duration of the representative body, varying from three (Hungary) to five years (Czech Republic). The statistical average is four years (Austria, Ireland, Netherlands, Portugal, Poland and Spain). Neither is the size of the representative body on which the establishment of the select committee depends, uniform. The legal options are very variable. So Hungary requires fifteen members, Portugal twelve, Slovenia ten and Lithuania only six. However, in several countries

(Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Italy, Latvia, Malta, Netherlands, Slovakia, Spain, Sweden or United Kingdom), the transposition law avoids establishing a number of members of the RB from which to establish the SC, and so this decision lies on the representative body itself.

The number of legislations that have chosen not to establish rules regarding either the chairmanship of information and consultation meetings (Austria, Belgium, Cyprus, Czech Republic, Germany, Ireland, Italy, Lithuania, Malta, Portugal, Slovenia, Slovakia, Spain and Sweden) or the finances of the functioning of the representative body (Cyprus, Malta, Sweden or United Kingdom) is also significant. The highest degree of convergence is with regard to the financing of experts. The most national regulations have made use of the capacity established in Annex 2, h) sub. 3, limiting financing by the SCE to only one expert. The German and Irish laws offer exceptions to this general rule.

B. Analytical comments

Austria.- The number of members of RB (works council in accordance with the expression used by the national law) shall be adapted to take account of changes occurring within the SCE and its subsidiaries and establishments according. The SCE works council is enabled to elect a SC from among its members, comprising at most three members. The SCE works council adopts its rules of procedure. Its period of office basically amounts to 4 years, save as otherwise provided (i.e. SCE's deletion from the commercial register, resignation, revocation of establishment by court). The SCE-Act establishes that any expenses relating to the functioning of the SCE works council and the SC are borne by the SCE. Four years after the SCE works council is established, it has to examine whether to open negotiations for the conclusion of the agreement or to continue to apply the standard rules adopted.

The competent organ of the SCE has to provide the representative body with the agenda for meetings of the administrative or the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

With regard to the members' rights and duties the Austrian legislator transposing the directive could refer to the existing regulations concerning independence of employer's directives, ban on discrimination, time off to perform their specific obligations and a more extensive protection against notice and dismissal. Merely the entitlement of members of the SCE works council to time off for training without loss of wages was explicitly codified in internal law.

Cyprus.- The Cyprus legislation introduces some minor alterations with regard to Annex 2, section (c). The first is that the SCE-Directive says 'the representative body has the right to be informed'; internal law provides that the representative body has the right to be informed in due time (although what constitutes due time is not stipulated). Cyprus has not opted to lay down rules on the chairing of information and consultation meeting as permitted by Annex 2, first paragraph section d).

Czech Republic.- In the event that, in the course of the term of office of the RB, the increase of the number of employees of an SCE in any Member State warrants the allocation of more seats to them, the necessary number of new seats shall be allocated in favour of the employees' representative from that Member State. The newly elected or appointed members of the employees' representative body shall represent, above all, the number of employees

that have increased in the SCE in that Member State. The term of office of the additionally elected or appointed members shall expire together with that of the employees' representative body.

In the event that, in the course of the term of office of the employees' representative body, the decrease of the number of employees of an SCE in any Member State warrants the allocation of fewer seats, the term of office of the respective number of members of the employees' representative body representing employees from that Member State, shall end. The end of the term of office of a member of the employees' representative body, elected or appointed in the respective Member State, shall be decided by lottery. The employees' representative body shall inform the board of directors or management organs of the SCE about its composition and any change thereof without unnecessary delay.

The employees' *representative body or select committee may meet at any time without the presence of third parties* A competent SCE organ or a member thereof may attend the meeting of the representative body or select committee only if they have been invited in advance and their presence received the approval of two thirds of the representative body. All forms of direct or indirect influence on the representative body and its individual members and all forms of direct or indirect restrictions or hindrance shall be prohibited. Members of the employees' representative body shall be relieved of their employment duties for the duration of the meeting. Prior oral notification of the member's direct supervisor shall be deemed sufficient.

The board of directors or administrative board and general director of the SCE shall present the employees' representative body with regular reports at least once every accounting period on the development of business and prospects of the SCE. This report shall include detailed information on the activity and situation of the European Cooperative Society.

Estonia.- The RB shall adopt its rules of procedure. The SCE shall compensate for any reasonable expenses relating to the activities of the RB and the select committee so as to enable the RB and the SC to carry out their task in an appropriate and unhindered manner. The SCE shall primarily compensate for the following expenses: 1) expenses related to the organisation of meetings; 2) expenses related to the provision of translation services; 3) travel and accommodation expenses incurred by members; 4) expenses related to inviting at least one expert. The number of experts participating in not limited. The SCE is obliged to compensate expenses related only by one expert. However, if it so consideres, it may compensate of all experts. Also, insofar as this is necessary for the fulfilment of their tasks, the members of the RB shall be entitled to time off for training without loss of wages. At least 14 calendar days a year shall be ensured for training without loss of average wages.

Germany.- Instead of "representative body", the SECBG uses the word "European Works Council". This shall be composed of employees of the European Cooperative Society, its subsidiaries and establishments. Germany did not made use of the option established by Annex 2, h), sub. 3 SCE-Directive. The provisions concerning the constitution and the composition of the SNB shall apply *mutatis mutandis* with respect to the establishment of the EWC, subject to the provision that the SCE, its subsidiaries and establishments shall take the place of the participating SCE, concerned subsidiaries and concerned establishments. The term of office of the members from within the country shall be four years, unless such term comes to an end prematurely owing to dismissal or for other reasons.

Hungary.- The national law requires the RB to elect a President and Vice-President. The President and two other members from different Member States compose the SC. The term of office of the RB is three years. The law includes detailed rules for dissolving the representative body. The possible reasons are: i) the SCE is wound up without a legal successor; ii) its mandate expires; iii) its mandate is withdrawn and iv) the number of its members is reduced by over one third for any reason.

The SCE-Act requires the body to adopt its own rules of procedure. Unless otherwise provided in these rules of procedure, decisions of the RB shall be taken by simple majority.At the request of the RB, the administrative or the management board shall examine on at least an annual basis whether changes in the number of employees in individual Member States are in accordance with the 10 per cent rule. If changes justify it, the RB may initiate a new election or appointment procedure, and at the same time the terms of office of current members from the given country terminate. The national law uses the singular form – member –, but it does not specify a procedure for the case when there are more then one members from the given country.

Ireland. – The RB shall be composed of employees of the SCE and its subsidiaries and establishments elected or appointed from their number by the employees´ representatives or, in the absence, by the entire body of employees. The members of the RB shall be elected or appointed in proportion to the number of employees in each Member State by the SCE and its subsidiarities and establishments, by allocating in respect of Member State one seat per portion of employees employed in that Member State. The number of members of, and allocation of seats on, the RB shall be adapted to ake account of changes occurring within the SCE and its subsidiaries and establishments. The SB shall take any steps it deems necessary to ensure this.

Italy.- The RB shall be composed of employees of the SCE and its subsidiaries and establishments elected or appointed by the employees' representatives or, in the absence thereof, by the entire body of employees, *in a joint agreement with trade union organisations that sign the national collective bargaining*. If changes occur within the SCE and its subsidiaries and establishments, the national law provides the followings rules: i) if the SCE has a new local productive unit in a Member State which was not included before in the SCE: the employees of that productive unit must appoint or elect a member in the representative body; ii) if the SCE closes a local productive unit in a Member State: the employees' representatives of the local productive unit end their term of office and the composition of the representative body changes with regard to the new structure following the forfeiture of the employees' representatives; iii) if the SCE changes the distribution or occupational level in the SCE, or in a subsidiary company, per portion at least equal to 10 per cent of the total occupational level of the SCE: employees' representatives which operate in each Member State must be modified with regard to these changes.

The costs of the representative body shall be borne by the SCE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner *and the training aimed to perform their duties*. In particular, the SCE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

Latvia.- The national law has transposed Annex 2, b), sub. 2 incorrectly. The Directive establishes that the competent organ of the SCE shall provide the RB with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory body. Nevertheless, internal law declares that representatives of the administrative organs of a European company shall prepare a meeting agenda and inform the representative body about the agenda.

Members of the RB have the right to a paid educational leave in order to acquire knowledge that is necessary to fulfil the duties of the members of the representative body. The SCE shall cover the expenses that are related to the functioning of the representative body. These expenses include the election of its members, the organisation of negotiations (premises, materials, staff, and translation), the trips of the members of this body (travel expenses and allowance expenses) and also the invitation of one expert.

Lithuania.- If due to the changes in the structure of the SCE or the number of employees in the Member States or in its subsidiaries, establishments or the establishments of its subsidiaries it is necessary to increase the number of the members in the RB, the RB shall decide on the appointment (election) of an additional member, taking into consideration the opinion of central management, that is not binding. Having taken such a decision, the RB shall approach central management with a request to start the procedure for the appointment (election) of the new member(s) in accordance with the provisions of the Law.

At its first meeting, the RB shall elect the chairperson and a deputy chairperson by a majority vote of all its members. It shall also approve the rules of procedure. If the RB has more than six members, it shall elect a three-member committee that shall be responsible for the performance of the functions of the RB between their meetings. If possible, the members of the RB should be from different Member States.

The first and regular meetings of the RB shall be called by the central management. The first meeting must be called within 90 days. The SC shall have a right to hold extraordinary meetings. Having co-ordinated the venue and time of the meeting with central management, the chairperson of the RB shall ask central management in writing to call the meeting.

Netherlands.- If the SC has been created, the regulartions of the RB should contain rules on the rights of this committee. In cases where the body can no longer be considered to be representative (that is when there have been lasting changes in the respective numbers of employees in the different Member States) the RB should change its composition within one year. As long as this change of composition has not yet taken place, the members from the respective countries are granted voting rights as if the change in composition had already taken place, by adjunting the number of votes of the respective members. The SCE-works council informs the SCE about this composition.

The competences of the RB are slightly broader than in the Annex of the SCE-Directive. The competence is limited to questions which concern the SCE itself, and any one or more of its subsidiaries or establishments or which exceed the powers of the decision-making organs in a single Member State. The difference with the Directive is that the Dutch version of the Directive uses the word *and*: the competence is limited to questions, which concern the SCE itself, *and* one or more of its subsidiaries or establishments. On this issue, the Dutch translation of the Directive is different from the the English, German and French one.

The administrative or management board of SCE and RB should hold a special meeting in the case of special circumstances. The chairman of this meeting is alternately a representative of the SCE and a representative of the RB.

Poland.- The number of members of, and allocation of seats on, the RB shall be adapted to take account of changes occurring within the SCE and its subsidiaries and establishments. It takes place every two years. If a considerable change in the number of employees employed in some of these units occurs, a competent organ of the SCE requests the employees' representatives, and when there are none, the employees employed in particular Member States to appoint or elect the members of the body representative of the employees in the number defined by law. The members of the RB shall be entitled to time off for training without loss of wages. This training shall not exceed two months during the term of office. Remuneration during this training shall be calculated as for the time of annual leave. The SC is composed of one chairperson and two members with restriction that these persons shall represent different Member States. The SC is obliged to run the current affairs.

The RB or the SC can express their written opinion concerning issues being consulted during the meeting or within 14 days after its termination. The competent organ of SCE, before taking decisions concerning the abovementioned opinion, shall examine any opinions; and it is obliged to inform an applicant of taking or not taking into account the opinion.

The Polish legislator prescribes the possibility of laying down rules on the chairing of information and consultations meetings contained in the Directive. The chair of information and consultations meetings is taken alternately by a chairperson of the RB or a member designated by a chairperson and a person designated by a competent organ of the SCE.

The costs of the RB shall be borne by the SCE, unless other rules to this regard were agreed by the competent organ and the representative body. The Polish legislator states that there is a possibility to limit funding to cover one expert only. But the SCE-Act dpos not clarify who decides to introduce this limit. The annual budget is fixed by mutual agreement between the RB and the competent organ of the SCE. In case the budget is not established by the end of the year preceding the budgetary year, the competent organ of the SCE shall establish the budget of their own accord, although they are supposed to allocate a sum of money which is equal to the result of multiplying the number of members of the RB by the amount of three average remunerations in the business sector within three months preceding that particular year, published in the Office Journal of the Republic of Poland (*Monitor Polski*).

Portugal.- The number of members shall be re-evaluated at the end of each term of office (four years) in order to attend to possible modifications according to the criteria established for the constitution.

The SCE must provide for members of RB the financial resources needed to support their *operation costs*, as well as those of the SC, where applicable. Operation costs include the cost of organising meetings, providing interpretation facilities, accommodation and travelling expenses and one expert funding. Another solution can be agreed by the representative body and the management or administrative organ of the SCE. However, the SCE must always support the costs necessary to pay one expert. The SCE should also provide for the RB the material resources needed to enable them to perform their duties in an appropriate manner, including an appropriate space for the development of their activities and a notice board to provide information.

Accommodation and travelling expenses can be paid pursuant to the system applicable in the subsidiaries or establishments where the employees' representatives work. However, they can not treat any member of the representative body less favourably. The funding to cover the expert can be regulated by the rules applicable to the members from the same Member State. Participating legal entities support the expenses concerning the expert in proportion to their number of employees.

Slovakia.- Transposition of Part 2 (d), sub 2) is incomplete due to the fact that Slovak law establishes only that "Board of Directors or Administrative Board shall procure that the representative body can whenever meet on its closed meeting/session without the members of Board of Directors or Administrative Board being present". Slovak law omits to entitle also SC (and enlarged SC) to meet whenever on its closed meeting without the members of competent organ being present. However, there is possible to interpret the term representative body used extensively, namely so that it covers also term SC in respect to entitlement to closed meetings.

Slovenia.- As soon as the members of the RB have been appointed, the management of the SCE shall convene *a constituent meeting* with the RB. At that meeting, the RB shall elect a chairperson and a deputy chairperson from among its members. The chairperson or, in their absence, the deputy chairperson shall represent the RB as regards the decisions taken and shall report their decisions to the management of the SCE.

The costs of the RB and the SC are to be borne by the SCE, which is obliged to provide the members with the financial and material resources that they require in order to perform their tasks correctly. Except where agreed otherwise the SCE bears, in particular, the costs of organising meetings, the provision of interpretation services and travel and accommodation expenses of the members of the RB or it SC. The SCE also bears the expenses for one expert who may be invited to attend by RB or it SC.

Spain.- The RB adopts its agreements by the majority of its members, with full competences to prepare its own internal working regulations and with the capacity to elect a chairman. Spanish law does not specify under what circumstances the number of members of the RB may justify the election of a SC. However, two of the provisions established are a novelty. On the one hand, it acknowledges the right of other members of the RB to attend SC meetings, even when they are not an integral part of the SC but have been elected or appointed to represent employees who are "directly affected by the measures treated." On the other, it imposes on the SC the duty to regularly inform the RB of its actions and the result of its meetings.

Spanish law imposes a duty to the competent body of SCE to provide the RB the minutes of the meetings of the administrative body, or given the case, the supervisory body, and "copies of all documents submitted to the general meeting of its shareholders", at least one month in advance in advacnce from the day fixed to have this meeting.

Lastly, Spanish legislation has a principle of legal symmetry between the SNB and the RB with regard to financing and to the scheme for renewal. All statements made above for the SNB can be repeated here with regard zï the RB.

United Kingdom.- The national law establishes some differences. Firstly, while the Annex states that in "exceptional circumstances (…) the representative body, or where it so decides,

in particular for reasons of urgency, shall have the right to meet (…) the competent organ of the SCE", the Schedule is less clear. It states only that, in exceptional circumstances, "the representative body may decide for reasons of urgency, to allow the select committee to meet the competent organ". However, the Schedule specifically provides the right to a second meeting in the event of management "not acting in accordance with the opinion expressed by the representative body". And does not include a specific reference to the prerogatives of management being unaffected.

On the other side, the members of the RB must not only inform employee representatives, but also the employees themselves, "if no such representatives exist".

3.1.3.3 Participation of employees

A. General considerations

1. The standard rules regarding the participation of employees are regulated in Part 3 of the Annex to the SCE-Directive. The Community Directive differentiates between the scheme of participation depending on whether the SCE has been established by transformation or otherwise. In the former case, all aspects of employee participation implemented before registration of the SCE shall continue to apply in the SCE (section a). In all other cases, employees of the SCE and its establishments and subsidiaries, or their bodies of representation, shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SCE "equal to the highest proportion in force in the participating companies concerned before registration of the SCE" (Annex 3, b). Secondly, and as established by the Annex 3, c), "if none of the participating legal entities was governed by participation rules before registration of the SCE, the latter shall not be required to establish provisions for employee participation".

   The SCE-Directive specifies the rules with regard to the distribution of members of the administrative or supervisory body in the SCE. In short, these provisions are: i) it corresponds to the RB to adopt the decision of allocating the seats that correspond to employees in the administrative or supervisory body amongst the employees' representatives in the different Member States, "according to the proportion of the SCE's employees" in each of them. ii) If the implementation of this proportional criterion gives rise to differences in the presence of representatives in the aforementioned bodies, the RB must redistribute the existing seats, providing one of the seats to the Member States that were not initially represented, especially to the State where the SCE has its registered office, if not represented, or, otherwise, to the State employing the largest number of workers within those that were not represented initially. The SCE-Directive provides that each Member State may "determine the allocation of the seats it is given within the administrative or supervisory body."

   Finally, the Annex 3, e) recognises to all members of the administrative body or, where appropriate, the supervisory body who have been elected, appointed or recommended by the RB or, depending the circumstances by the employees, the same rights and obligations as the members representing the shareholders.

2. The transposition of the standard rules regarding the employees' right to participation into the national law of EU countries has not presented problems of great importance. Even, several national laws (Cyprus, Estonia, Denmark, Hungary, Ireland, Italy, Malta,

Portugal, Slovakia, Spain or Sweden) have undertaken an almost literal transposition of Annex 3 of the to the SCE-Directive.

Without prejudice to the reasoning below, modifications or omissions are minor, in general terms. In this chapter regarding slight alterations, the United Kingdom Regulations use a less prescriptive language in the transposition of section b), substituting the wording of the Directive ("according to the proportions of SCE's <...>") for another expression with a similar scope ("taking into account the proportion of employees of SCE <...>"). Neither can the restriction on the position of RB representatives in the administrative or supervisory bodies of the SCE, established with a similar content in the Finnish and Swedish legislations with the aim of avoiding the appearance of conflicts of interest, be considered to be a conflicting rule with the last paragraph of Part 3 of the Annex. Pursuant to these legislations, these representatives may not be part "to a collective agreement, to an industrial action or any other questions" where the primary interest of employees may be in conflict with the interest of SCE. This consent to Community requirements must be attributed of the aforementioned amendment in German legislation in order to reconcile the Community regulation with the particular features of the *Mitbestimmungsgesetz.* With regard to the allocation of seats on the administrative or supervisory organ, this national law considers not only the proportion of persons employed by the SCE but also those employed by its subsidiaries and establishments.

3. In the style established in Parts 1 and 2 of the Annex, Part 3, now examined, also contains clauses that open up to national legislations. Specifically, the last subsection of paragraph 3 establishes that "each Member State may determine the allocation of the seats it is given within the administrative or supervisory body". Therefore, national laws may complement the allocation criteria for the social members in the administrative and supervisory bodies.

   A relevant number of transposition laws (Denmark, Estonia, Finland, Germany, Hungary, Netherlands, Poland, Slovakia, Slovenia, Spain and Sweden) have used this option, stating the criteria to be applied with regard to the allocation of seats of national representatives in the aforementioned bodies. This, however, is not an option taken unanimously by all EU countries, with an equally significant number of legislations that have decided not to set their own provisions on this issue (Austria, Cyprus, Czech Republic, Malta, Latvia, Lithuania, Portugal and United Kingdom).

   Most of the following observations are aimed, precisely, at highlighting the terms in which the different national transposition laws complement the SCE-Directive on this specific issue.

B. Analytical comments

Estonia.- If one or several seats have allocated for Estonia in the supervisory or administrative board of an SCE, a member or members representing employees shall be elected taking account of the specifications for the election of members of the supervisory or administrative board of an SCE. The provisions of the election of the members of the SNB and of the RB apply to the election of members of supervisory or administrative board of SCE who represent Estonian employees.

Finland.- Pursuant to the option contained in the SCE-Directive, the Finnish legislation establishes the following rule with regard to the allocation of seats of national representatives on the administrative and supervisory bodies of the SCE: "An SCE's employees employed in Finland have the right to appoint their representatives to the administrative or supervisory organ by agreement or election. If the employees cannot reach an agreement concerning the procedure to be followed, the occupational safety delegates representing the greatest number of workers and salaried employees shall jointly arrange an election or other selection procedure in such a way that all employees have the right to participate therein".

Germany.- In Germany, the employee representatives on the SCE's supervisory or administrative board who are allocated to companies within the country shall be determined by an elective body (so-called *Wahlgremium*), composed of persons representing the employees of the European company, its subsidiaries and establishments. The provisions applicable to the election of the SNB shall apply *mutatis mutandis* to the election procedure.

With the deliberate aim of making the right to participation established in the SCE-Directive and in national legislation compatible, the standard rules set in the German transposition law establish the presence, in the administrative and supervisory bodies of the SCE, of representatives from the so-called *Arbeitsdirektor* within the management, irrespective of whether the SCE has a one-tier- or two-tier-system. The Personnel Director has the same rights and duties as the other members of the managing board (*Vorstand*).

SCEBG has taken some precautions in the case that a participating company is codetermined according to the Coal and Steel Codetermination Act of 1951 (*Montanmitbestimmungsgesetz*), which provides a parity codetermination from 1000 employees upwards. In this hypothesis, so where the supervisory board of one of the participating companies consists of an equal number of shareholder and employee representatives and a further member, "*an additional member* shall be elected to the supervisory or administrative board of the European company on the basis of a joint proposal from the shareholder and employee representatives." In so far, the German provision corresponds with the legislative spirit of the Directive (the before-after approach and the protection of existing rights) and is therefore compatible with Community Law.

Hungary.- There are two singularities in Hungarian legislation. Firstly, affecting the capacities of the RB with regard to the social representatives in the administrative and supervisory bodies of the SCE. In this sense, the RB does not only have the position to nominate or recommend employees' board representatives, but it is also entitled to withdraw them from the board. This stipulation is analogous with the procedures applied in the nomination of members of the SNB and representative body, and in line with the national law on board representation. The second singularity refers to the criterion used by this regulation for the allocation of seats of employees' representatives in the aforementioned bodies. Pursuant to this legislation, they shall be distributed in proportion to a number of employees in the subsidiaries and other establishments.

Italy.- The Legislative Decree provides that the representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SCE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SCE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the

representative body shall appoint a member from one of those Member States, in particular the Member State of the SCE's registered office where that is appropriate. The allocation of the seats within the administrative or supervisory body is defined by national collective bargaining.

Latvia.- The RB shall decide on the allocation of seats within the administrative organ of a SCE among the members of the representative body according to the proportion of employees of the SCE in each Member State, or on the way in which the employees of the SCE may recommend or oppose the appointment of members of the administrative organ of the SCE. It shall be ensured as far as possible that the employee representatives of each Member State – especially the Member State of registration of a SCE – are included in the composition of the administrative organ of the SCE.

Lithuania.- The decision on the allocation of seats in the administrative or supervisory organ of the SCE to the respective Member States or the decision on the way the employees of the SCE may propose the appointment of members to these organs or to object to their appointments shall be taken by the RB. If the allocation of the seats selected by RB is not applicable in at least one Member State, the RB, in order to seek a balanced allocation of seats, shall give the priority to the employees of the Member State of the registration of the SCE.

Netherlands.- The internal law contains a provision in the case that after allocation of the first seat to the employees in a Member State with the largest proportion of employees there is no representation of Dutch employees, the second seat will be allocated to Dutch employees. And the third and following seats will be allocated to employees from other Member States which are not yet represented.

Poland.- Polish legislation has introduced some amendments to the criteria established by the SCE-Directive with regard to the allocation of representatives whereby if, as a result of the mentioned allocation, employees employed in one or more Member States do not have their representative in the administrative or supervisory body, the representative body shall determine the allocation of seats of representation to employees of these Member States in the following order: the criteria applicable in these cases are the following two. Firstly, in compliance with Community legislation, allocating a seat to employees employed in the Member State of the SCE's registered office. The second criterion, introduced by the Polish legislator, is to give the seat to employees employed in the Members State with the highest level of employment.

On the other hand, the national transposition law states that the elections of the members representing employees in the SCE's organs in Poland are direct and are undertaken by secret ballot of the assembly of staff of the establishment according to the adopted rules of procedure. The SCE-Act calls these rules as the work rules. These are rules which are adopted at work establishment by an employer in agreement with the trade union active at the work establishment (art. 104 of the Polish Labour Code). Where the content of the work regulations is not agreed with the trade union active at the work establishment within a certain time set by the parties and also in the case where there is no trade union at a work establishment of a given employer, the work regulations shall be determined by the employer.

Slovenia.- Slovenian legislation establishes a similar provision than Polish legislation when allocating the seats of representatives in the case that no seat is allocated to the representatives of one or more Member States. In this hypothesis, it is necessary to ensure that a seat is granted to the employees from the Member State in which the SCE will have its registered office. If a seat is already granted to this Member State under the former provision, the seat is to be granted to the Member State that does not have a seat allocated and with the highest proportion of employees.

Spain.– Pursuant to the provisions established in Community legislation, the Spanish transposition law states the proportionality of workers employed in each State as the criterion to allocate the seats of social representation in the administrative and supervisory bodies of the SCE. Nevertheless, it states some special rules for the case in which the allocation following the above criterion entails differences in the representation of one or more Member States. In this case, the RB must proceed as follows: i) it must recognise one of the seats to the Member States that were not initially represented, especially to the State where the SCE has its registered office, if not represented; ii) otherwise, it shall give the seat or the seats to the States employing the largest number of workers within those that were not represented initially.

United Kingdom.- Whereas the wording of the Directive states that the representative body shall decide on the allocation of seats "according to the proportion of the SCE's employees in each member state", the Schedule to the Regulations is less prescriptive. It states that the representative body shall decide on the allocation of seats "taking into account the proportion of employees of the SCE employed in each Member State". The Schedule also does not include anything covering the wording "Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body".

3.1.4 Common Provisions

3.1.4.1 Field of application

Section IV of the SCE-Directive is entitled *Miscellaneous Provisions*, and contains provisions regulating a heterogeneous group of issues with the common denominator that they are applicable, on the one hand, to both the rules of involvement established through agreement and those implemented and exercised through standard rules. And, on the other hand, they are applicable to the SCE constituted, at least, by two legal entities or by transformation, but also by two natural persons or by a single entity and natural person. In short, these rules have a general scope. Specifically, these common provisions establish rules on the following four issues: reservation and confidentiality, protection of employees' representatives, spirit of cooperation and the consequence of the establishment of an SCE to the detriment of the involvement of employees. All of these issues shall be examined now.

3.1.4.2 Reservation and confidentiality

A. General considerations

1. Art. 10 of the SCE-Directive contains a complex structure. Specifically, this precept states two substantive or material provisions and an instrumental or adjective provision. Besides these provisions it also establishes a varied series of rules, the implementation of which is referred to the decision of the Member States.

2. The first of these substantive provisions is contained in art. 10.1, which establishes the duty of members of the SNB, the RB and representatives exercising their duties in the framework of information and consultation procedures, as well as the experts appointed by them, not to reveal any information which has been given to them "in confidence". This obligation shall continue to apply after expiry of their terms of office; and non-compliance of it may carry with it responsibilities pursuant to national legislations and practices.

   The transpositions of this rule into national laws have a high level of legal coincidence. Most of them have undertaken the incorporation of this rule into national legislation in a similar fashion to the Community text, often using the same expression literally.

   Nevertheless, some particular features may be quoted. Leaving the most significant differences aside for the section containing analytical comments, I shall now comment those differences of a lesser importance. To this regard, those national legislations that enlarge the catalogue of recipients affected by confidentiality must be mentioned. In this sense, some legislations (Estonia, Ireland, Lithuania and Poland) extend it to the translators participating in the work sessions of the SNB and the RB, or more simply, to those who have access to the information provided by the competent bodies of the SCE.

3. The second substantive provision is established in art. 10.2, sub. 1 whereby each Member State shall provide, in specific cases and under the conditions and limits down by national legislation, that the supervisory or administrative organ of an SCE "is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SCE (…) or would be prejudicial to them".

   Three clear conclusions may be drawn from a simple reading, all of them easy to state. Firstly, the complex legal structure adopted by the written provision. On the one hand, it states the two basic elements of any legal rule: a data (information, the nature of which, may, according to objective criteria, harm the functioning of the SCE or be prejudicial to it) and a legal consequence (exemption of the competent organ of the SCE from the general duty to provide information). However, on the other, both elements of this legal rule (data and legal consequence) may be complemented and developed by national legislations. This may be assumed, with no room for uncertainty, from the literal sense of this precept, which starts by stating that "each Member State shall provide (...)".

   The second conclusion affects, precisely, the nature of this reference to national legislations or practices made by the SCE-Directive. Indeed, this is not an open or unconditional reference; quite the opposite, this Community regulation limits, with some precision, the legal scenario of these legislations. On transposing this provision, national laws must consider that the possibility of exempting the competent body of their duty to inform employees' representatives has a limited nature; that is, it can only be done "in specific cases" and when the nature of the information, according to objective criteria, may seriously harm the functioning of the SCE or be prejudicial to it.

   The third and last of these conclusions derives from the legal consequence established in the article, which simply establishes a rule that exempts the competent body of the SCE from the duty to facilitate information that is established, in general and in a *contrario sensu* interpretation of art. 10.1 of the Community regulation.

Only a few legislations (Hungary, Portugal, Slovenia and Sweden) have not taken heed of this legal reference established by the SCE-Directive. Or, in other words, most of the transposition laws have developed the conditions and limits applicable to the case where, due to the nature of the information, the competent body of the SCE is exempt from providing the information to employees' representatives. However, the technique used by the national systems to this regard does not follow a common pattern. At least three large groups of laws may be identified, the second of these susceptible to opening a new and significant differentiation.

The first group of legislations (Cyprus, Denmark, Estonia, Italy, Lithuania, Malta, Poland, Slovakia and Sweden) simply reproduces the non-specific and open terms of the SCE-Directive literally, without providing further legal certainty to the case for which it is implemented. A second group of laws, however, do not repeat the contents of art. 10.2 of the Community law and incorporate some singularities aimed to strengthen the degree of legal certainty. Nevertheless, the intensity of these singularities is variable, and a three-level scale may be drawn up: minimum, middle and high. At the minimum level of this scale we find those legislations that use a generic and unspecific language that does not achieve their formal objective of developing the conditions and limits of the implementation of this case. In this sense, Austria exempts the competent to body of the SCE from providing information that may influence the political direction of the SCE; Finland substitutes the Community expression "*according to objective criteria"* by another one: "*particularly weighty reasons"*; Germany suspends the duty to inform with regard to "trade and business secrets" that may harm the functioning of the SCE; Denmark suspend the same duty when the information *"would be detrimental or harmful*" to the society and, finally, Ireland and United Kingdom exempts the body of the SCE from the duty to inform when providing this information may seriously damage the company. At the middle level we find legislations that try to complement or complete the wide concepts found in the SCE-Act (Spain), but establishing formulae that, although not as open than national laws at the minimum level, do not offer a list, even if only indicative, of the conditions and limits applicable to the exemption from the duty to provide information. Finally, at the high level we find a reduced number of legal systems (Belgium and Netherlands) with a political will to develop the mandate of the SCE-Directive in a real and effective manner. In the third, and last, group we may include those national regulations (Czech Republic and Latvia) that refer this issue to the provisions contained in their respective Commercial Codes, thus lacking a regulation that is exclusively applicable to the SCE.

4. The instrumental or adjective rule is established in the first section of art. 10.4 of the SCE-Directive. This precept provides that, in applying the substantive rules commented above, "Member States shall make provision for administrative or judicial appeal procedures which the employees´ representatives may initiate when the supervisory or administrative organ of an SCE or participating companies demands confidentiality or does not give information".

   With the exception of Estonia, Finaland and Slovenia, all other national laws have transposed this instrumental rule, although a variety of formulae have been used by the Member States. Actually, this variety translates faithfully the diversity of the bodies in charge of hearing and solving labour conflicts in each European country. Only Belgium and Italy have appointed a specific body to solve this specific conflict. As general rule,

this competence, in the other countries, falls upon the body (or one of the bodies) with general competences to solve conflicts that take place either in the sphere of labour relations (Malta, Cyprus, Czeck Republic, Denmark, Germany, Hungary, Ireland, Latvia, Lithuania, Malta, Netherlands, Portugal, Slovakia, Spain and United Kingdom), as labour inspection or labour courts, or in other spheres, such as the sphere of commerce (Poland) or civil (Italy).

5. The legal content of art. 10 of the SCE-Directive does not finish with the substantive and adjective rules examined. This article also states a number of provisions for which implementation in practice are left to the single-handed decision of the Member States.

   Specifically, there are three provisions of this nature established in art. 10 of the Directive under examination. Firstly, art. 10.2, sub. 1, establishes the possibility that the dispensation to supply information is subject to "prior administrative or judicial authorisation". Secondly, art. 10.3. allows Member States to implement special provisions in favour of SCEs established in their territory "which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions" (*tendency clause*). However, this authorisation is subject to the condition that "on the date of adoption" of the SCE-Directive such provisions exist in national legislation. Lastly, art. 10.4, sub. 2, allows Member States to "include arrangements designed to protect the confidentiality of the information" due to the regulation of administrative and judicial procedures to hear and solve conflicts raised by employees' representatives against the decisions of the competent bodies of the SCE to require confidentiality or to withhold information.

   The use of these options by national transposition laws has been very limited. Only three legislations have included one, or at the most two, of these three possibilities. The Austrian, German and Swedish legislations have included special provisions applicable to tendency or ideological SCE (*tendenz clause*). The SCE-Act in German, Cyprus and Czech Republic have included the possibility of subjecting the dispensation to supply information to the prior administrative or judicial authorisation, as established by art. 10.4, sub 2.

B. Analytical comments

Austria.- The Austrian legislator exercised the option laid down in art. 10.3, allowing particular provisions for SCEs which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in national legislation, in art. 132 ArbVG. This article not only protects companies which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, but also political, professional organisational, religious, charitable, educational and scientific aims.

Cyprus.- The Registrar is the authority to order the competent organ of the SCE or the participating legal entity to inform the SNB or the representative body of the employees on issues that are considered confidential. For such an order, application must be made by the SNB or RB to the Registrar, and the Registrar must give a reasoned decision for having issued such a disclosure order. It should be noted however that national legislation allows the review of the Registrar's decision by the competent Court of Law, and that throughout such court procedures the information's confidentiality must be ensured.

Czech Republic.- The participating legal entities shall provide the SNB with any information it has requested. This provision shall not apply if the court has ruled, on the proposal by the SNB or a participating legal entity, that the participating legal entity is not obliged to provide information. The court shall decide in favour of the non-provision of information if the revelation thereof would seriously harm or preclude the functioning of the participating legal entity or the SCE and its units in various Member States and the SNB manifestly is in no need to receive such information.

If an SCE or participating legal entity has requested a member of the SNB to maintain confidentiality without giving a well-based reason, the court may rule, on the proposal of the SNB or a member thereof, which have been asked to maintain confidentiality, that the confidentiality obligation ceases to apply on the date of the entering into force of such ruling. The *onus probandi* rests with the person that has refused to provide information or insists on its obligation to maintain confidentiality. The SNB shall always be qualified if the case is brought before the courts in the Czech Republic, even if the SCE does not or is not to have a registered office in its territory.

Estonia.- At the request of employees' representatives, the management bodies are obliged to justify the confidential nature of the information provided. The obligation of confidentiality does not apply to: i) the communication between members of the SNB and experts and translators and ii) employees' representatives participating in an information and consultation procedure who communicate with translators and experts and employees' representatives of the SCE located in Estonia, if the parties decided during negotiations to establish one or more information and consultation procedures instead of an RB.

The rules of the Directive concerning reservation and confidentiality are not sufficiently clearly transposed into Estonian law and therefore may cause misinterpretations on confidentiality issues. The law do not clearly refer to the rules of confidentiality and of the right to judicial appeal procedures in the legislation. There is no clear distinction between main and accessory provisions. Also, the law should prescribe if the confidential information is allowed to forward, it should be clearly forwarded as confidentially received information.

Finland.- The article 10 SCE-Directive has been translated as such, but it has been added that "(…) any information about *business and trade secrets* given to them in confidence, the dissemination of which is likely to be prejudicial to the company, its business or contractual partners, to employees or employees' representatives other than those whom the information concerns".

The administrative or judicial appeal prior authorisation has not been transposed in Finnish legislation. However, legislation maintains that "this information shall, however, be disclosed without delay once the grounds for the derogation from the obligation to provide information no longer exist. At the same time, the grounds for the procedure for derogation shall be clarified". A procedure like this is post-procedure and the reasons must be given only afterwards and we may doubt of its agreement with the SCE-Directive.

Germany.- Art. 10.3 of SCE-Directive is, by art. 39 SCEBG, entitled "Establishments with political, religious, charitable and other aims" (*Tendenzunternehmen*). The rules on this subject in German legislation are more extensive than in the Directive. According SEGB, these rules *"*shall not apply to European companies which, directly and predominantly: i) are engaged in the pursuit of political, coalition-related, religious, charitable, educational,

scientific or artistic objectives; or ii) serve purposes of publishing or the expression of opinions covered" by *Grundgesetz*. The SCE-Act adds that "information and consultation shall relate only to the full or partial compensation of employees for any financial disadvantages arising from the changes to the company or establishment concerned". There are doubts is this national regulation is or not not compatible with the Community law.

Hungary.- The Hungarian legislation did not make use the authorisation either to give a waiver in specific cases from the obligation of information, or to make such dispensation subject to prior administrative or judicial authorization. If the company has not provided the required information, the Court of Registration may, at the request of the special negotiating body, representative body or employees' representative, order it to do so.

Ireland.- Draft Regulations lists those who must respect the confidentiality of information as: an employee; a member of a) an SNB or b) the representative body; an employee representative in an information and consultation arrangements and a experts probiding assistance. Also proposes to extendn this duty of condidentiality to members of the Labour Courts, the Court´s registrar, its staff or any expert or mediator appointed by the Court to mediate in the event of a dispute on the confidentiality or otherwise of information provided by management.

Italy.- The "objective criteria" of article 10 paragraph 2 of the SCE-Directive (and recalled by the SPA) becomes "technical, managerial, productive criteria". The possibility to submit *ex ante* to the judge or to the administrative body the demand of authorisation to not transmit information provided by the Directive in the paragraph 2 second phrase of article 10 is not implemented by the Italian Legislator.

Implementing art. 10.4 of the SCE-Directive, the Italian legislator provides an administrative procedure by creating an independent body, named *Commissione Tecnica di Conciliazione* (CTC), aimed to judge the confidentiality or not of the information, and to decide the *criteria* of individuation of the information that is capable of endangering the functioning or the activity of the participating companies or of damaging them if disclosed. The CTC's members (three members in total) are appointed by: i):the representative body or by the employees' representatives involved within the information and consultation procedure; ii) the administrative board of the participating companies of the SCE and iii) jointly by the parties. In case of disagreement on the appointment of the third member, this is drawn from a list of six names suggested beforehand. The CTC closes the procedure no later than 15 days from the demand. For the moment, now a day, there are no yet information on conciliations operated by the CTC.

Latvia.- The definition of the commercial secret is defined in the Article 19 of the Commercial Law. A status of commercial secret may be applied to the objects of an economic, technical or scientific nature, or information which is recorded in writing or by other means that comply with the following requirements: belongs to the undertaking or are directly associated with the undertaking; is not accessible to third persons; has a financial or non-financial value; its coming into the disposition of another person, may cause losses and in relation to which reasonable measures have been taken to preserve secrecy.

If the administrative organs of a SCE or the participating cooperative society demand the confidentiality or dose not give the relevant information, the employees' representatives have the rights to ask the revision of this decision and the rights to apply to the court.

Lithuania.- Members of the RB as well as members of the SNB shall have the right of access to information considered to be a commercial, industrial or professional secret only when it is necessary for the performance of their duties, upon presenting a written pledge not to divulge the secret.

The central management may refuse in writing to provide information that is considered to be a commercial (industrial) or professional secret, if by objective criteria due to its nature it could produce harm or very great harm to the company or its activities. Upon the receipt of a written refusal, the RB, its committee or the SNC may, within a month of the receipt of the refusal to supply information, file a suit in court. If the court finds that the refusal to supply information is unfounded, the SCE or the participating legal entity shall be obliged to provide this information.

Malta.- Where there is a dispute between the competent organ of a participating company, concerned subsidiary or establishment or an SCE and a recipient as to whether the nature of the information or document which the competent organ has failed to provide can be harmful to the functioning of the company, the competent organ or a recipient may refer the dispute to the Industrial Tribunal for a decision as to whether the information or document is of such a nature.

If the Industrial Tribunal decides that the disclosure of the information or document in question would not, according to objective criteria, seriously harm the functioning of, or be prejudicial to, the SCE, participating company or any subsidiary or establishment concerned, as the case may be, the Industrial Tribunal shall order the competent organ to disclose the information or document, and the order shall specify: i)the information or document to be disclosed; ii) the recipient or recipients to whom the information or document is to be disclosed; iii) any terms on which the information or document is to be disclosed and iv) the date before which the information or document is to be disclosed.

Netherlands.- The confidentiality of information is applicable to the members of the SNB, RB, the employee representatives who are member of the administrative or supervisory board and the persons who act as representatives in any other procedure regarding information or consultation of employees. The employee representatives are obliged to treat confidentially any trade or business secrets in the course of their activities, as well as matters which are designated as being of a sensitive nature or which, in view of their sensitive nature, must be recognised as being sensitive. Confidentially of information does not apply towards experts, who are consulted by the SNB or RBl.

Portugal.- The Labour Code doesn't exactly define the "objective criteria", but it demands a written justification. In case of confidentiality required by the employer or grounded refusal to give information or conduct consultation, the collective representation structures can judicially challenge that decision in the terms supposedly foreseen in the Labour Procedure Code. However, this Code is still waiting to be reformed and no procedure has been foreseen yet. No review is established at an administrative level, but the unjustified failure to provide information or conduct consultation constitutes a serious infraction determining the application of a fine.

Slovakia.- Slovak law is very brief in context of possibility of management organ not to provide some information or provide them in confidence. There is missing any closer definition or specification of "*objective criteria seriously harm the SCE or its subsidiaries or establishments*". Even worse is the situation in case of possibility to provide information in confidence. Slovak law enables management organ to mark "*certain information*" as confidential, but does not define the term "*certain information*".

The SNB and RB may only initiate judicial procedure and may ask court to determine whether certain information "could, based on objective criteria, seriously harm the SCE, the subsidiaries and the establishments" or whether this information may be provided in confidence. According to reachable information, there have not been initiated none lawsuit of this kind in the SR. Too general law in this respect and missing interpretation rules can, in practice, lead to misuse of possibility/right of the management not to provide information (or obligation to keep their confidential) by the management.

Spain.- Spanish legislation has made the content of art. 10.2 SCE-Directive more specific, providing a greater legal certainty to the cases where the general duty of companies to provide information to the bodies, as articulated by the involvement of employees, is repealed. Spanish law introduces three significant specifications. Firstly, information that is subject to the exception clause has to deal, exclusively, with industrial, financial or commercial secrets. However, activation of the exception clause does not occur only with the existence of these secrets. Secondly, the requirement is that the dissemination of these secrets harms, according to objective criteria, the functioning of the organisational units of the SCE or is prejudicial to the financial stability thereof. Lastly, information related to the "volume of employment in the undertaking" is not susceptible to inclusion in the exception clause.

Sweden.- Article 10.2, first paragraph, SCE-Directive has not been implemented. The motivation in the proposition for not implementing it was that according to case law a possibility already exists to neglect information and negation in specific cases where it could seriously damage the business.

Furthermore, Swedish legislation has implemented art. 10.3. The national law states particular provisions for European companies, which pursue the aim of ideological guidance. The activities can be religious, scientific, artistic, otherwise non-profit oriented, co-operative objectives and trade-union and political objectives.

United Kingdom.- The SCE-Act (Regulations) deals with appeal procedures where an individual, given material in confidence, believes it is not reasonable for management to require the material to be kept confidential. And also deals with appeal procedures where management refuses to provide information, arguing it would seriously damage it to transmit it. In both cases the appeal is to the Central Arbitration Committee (CAC). The CAC is a permanent independent body with statutory powers, which describes its main function as being "to adjudicate on applications relating to the statutory recognition and derecognition of trade unions for collective bargaining purposes, where such recognition or derecognition cannot be agreed voluntarily". CAC decisions are taken by a three-person panel with one member representing employers, one employees and an independent chair. As yet, there have been no cases on confidentiality relating to SCEs.

3.1.4.3 Spirit of cooperation

1. Under the inexpressive title "operation of the representative body and procedure for the information and consultation of employees", art. 11 of the SCE-Directive establishes what may undoubtedly be considered as the basic principle to regulate the relationship between the competent body of the SCE and employees' representatives, independent of whether this is undertaken through an RB or in the framework of an information and consultation procedure. This principle is no other than the *spirit of cooperation.*

2. A higher number of the national transposition laws have included the principle stated in art. 11 of the Directive. On occasions, the internal regulations use the same expression than the Community legislation; that is, the aforementioned spirit of cooperation (Austria, Cyprus, Czeck Republic, Ireland, Italy, Latvia, Malta and Slovenia). However, other laws accommodate the meaning of this principle to the internal legal language, using expressions that are quite similar in content for each specific legal system. In this sense, we have expressions such as *mutual trust* (Estonia) or *good faith* (Germany and Spain). Some regulations even duplicate the terms, adding to the term cooperation another term with a synonymous legal meaning. Thus, iterations are used such as *spirit of cooperation and collaboration* (Belgium), *cooperation and good faith (*Portugal), *cooperation, equality and good will* (Lithuania), *mutual cooperation in accordance with the requirement of good faith and integrity* (Hungary). The SCE-Act of Lithuania enounces the co-operation between the general principles which shall govern the relationship of social partners. These principles are equality, good will (and) respect for mutual interest. The SCE-draft Regulations of Ireland includes employees´ in this spirit of co-operation.

   None of the Scandinavian countries (Denmark, Finland and Sweden) have included a similar provision in their transposition laws. However, this omission is not exclusive to this homogeneous group of legal systems. The same may be found in the regulation of such different legal cultures as Czech Republic, Netherlands, Slovakia and United Kingdom. In Poland, the requirement of cooperation is applicable to the relationships between the competent body of the SCE and the RB, with no further extension, at least in a formal interpretation of Polish legislation, to relations between management and employees' representatives elected in the framework of information and consultation procedures.

3.1.4.4 Protection of employees´ representatives

1. The first paragraph of art. 11 SCE-Directive establishes that the members of the SNB, the RB, employees' representatives in the administrative or supervisory bodies of the SCE and, in short, employees' representatives exercising functions in the framework of information and consultation procedures have the right, during the exercise of their functions, to "the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment". The second paragraph of this article specifies the content of the guarantee, that is extended in particular "to attendance at meetings" of all representatives in SCE (SNB, RB, under agreement, or administrative or supervisory organ) and "to the payment of wages" for these representatives "during the period of absence necessary for the performance of their duties".

2. Most of the national laws (Austria, Cyprus, Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Malta, Netherlandas, Poland, Slovenia, Slovakia, Spain, Wedden and United Kingdom) mechanically transpose this set of guarantees; that is, they reproduce the term of the Directive in a strictly literal fashion. In Italy, only the first paragraph of art. 12 is literally copied . The second is different, because provides that the protection refers also to the case of attendance to meetings of the SNB or RB, or any other meeting of the administrative or supervisory board. And only if it is provided by the applied national collective agreement, they hace the right to get remboursed of the accommodation and travelling expenses. So, as clearly provided this article in comment, the possibility of rembuorsement of accommodation and travelling expenses is left to the bargaining power of the social partners.In some regulations (Poland), the transposition law has acknowledged a higher and more intense level of protection to employees' representatives in the SCE (or in the subsidiaries or participating companies) than the level established for representatives in undertakings of a domestic nature. Only the Czech legislation stands out, insofar as the members of RB shall not enjoy advantages for the discharges of their duties.

3.1.4.5 Misuse of procedures

A. General considerations

1. Art. 13 of the Community regulation obliges Member States to adopt the means necessary to avoid the establishment of an SCE with no aim other than to deprive employees of the right to involvement they already enjoyed or of withholding this right. Pursuant to this precept, it is up to national regulations to make this guarantee effective, specifying the legal consequences of the misuse of the establishment of the SCE in a way that is prejudicial to the right to involvement.

   We must highlight that art. 13 of the SCE-Directive adopts the classic and traditional legal structure of Directives. This precept states an aim or a result, which consists in preventing the misuse of an SCE for the purpose of depriving the rights to involvement, granting Member States the freedom to select the suitable means to achieve and ensure the useful effect defined.

2. In view of the abovementioned, the transposition of art. 13 must respond to two essential criteria. The first with regard to the national laws' lack of freedom to decide whether or not to transpose this specific provision; they are obliged to transpose it on pain of frustrating the effective usefulness required by the Community legislator. Nevertheless, under the second criterion, national laws have a certain margin at their discretion in transposing art. 13, as they may choose, from among the means available, the means they consider to be more suitable to ensure the result sought by the Directive.

   At least in theory, the implementation of these two criteria should entail two consequences. On the one hand, national laws must transpose art.13; there is no margin for non-transposition. On the other, the transposition itself can not be limited to reproducing literally and mimetically the legal contents of art. 13 since art. 13 does not define the means to avoid misuse in the establishment of the SCE; it only establishes an aim, which requires a necessary and inevitable means, instrument or measure to be satisfied.

Nonetheless, several national laws have not expressly transposed this important guarantee established in art. 13 of the Directive. This is the case for Czech Republic, Hungary, Ireland, Latvia, Netherlands, Portugal or Slovenia. Furthermore, certain legislations have mechanically transposed the content of this article, thus frustrating also the useful effect sought by it. This is the case for Cyprus, Denmark and Malta. Finally, there are delicate problems with some national laws that provide in a compulsory manner, in the hypothesis of misuses of procedure, to restart negotiations (Italy and Lituania). The negative assessment is linked to the whole renegotiation process, because it stars onli on demdnan of the empleoyees´ representatives. So the renegotiation is compulsory only if this representaion asked it (Italy)

B. Analytical comments

Austria.- The national law provides a concretion of the misuse's notion, saying that such a misuse especially derives from a modification of the SCE's structure. In this case, art. 229 ArbVG requires repeated negotiations according to art. 228 ArbVG ("structural changes"). Due to this, the SNB has to reconvene and start over negotiations. For this negotiation, the RB has to be assembled accordingly to the new structure.

Cyprus.- It is forbidden for any SCE to deprive or deny its employees of the right to participate in the SCE. Also, the SCE-Act provides that the person who violates the provisions of this legislation is guilty of an offence and, where he is convicted, is subject to a penalty of 2 years imprisonment or to a fine not exceeding CYP 20,000 (approximately 35,000 Euro) or to both penalties. These are the only sanctions provided in this legislation, and no differentiation is made between the violations of various sanctions. Thus the degree of seriousness of certain violations and the penalty to be imposed as a result of this seriousness is a matter that will be determined by the Courts and not the legislator. At first sight appear that the legislator gives the same weight to all the provisions of the legislation and may therefore deter an employer from violating what he may perceive as the less serious requirements.

Czeck Republic.- The SCE Act does not explicitly set the duty of the Czech Registration Court to verify the establishment and composition of the SNB, and the course and outcomes of negotiations in the case of an SCE with a registered office in the territory of the Czech Republic. The Czech legislation merely states that the Statute of an SCE shall be verified by notarial record which, however, shall verify accordance of the Statute with regulation, and thereby also the SCE Act, only in the case of an SCE with registered office in the Czech Republic. In accordance with Section 14 of the Czech SCE Act, the Statute of an SCE found to be at variance with the agreement on SCE employees' involvement, concluded under this Act, shall be null and void. The competent organ shall put the statute in harmony with the employee involvement agreement as soon as possible after a conflict between the statute and the agreement on involvement of SCE employees has been discerned.

Estonia.- If, after the registration of an SCE, significant changes are made in the SCE in connection with an undertaking or enterprise controlled thereby, and it may be concluded that, upon foundation of the SCE, the objective was to deny employees the right of involvement or restrict the exercise of such rights, new negotiations shall be held. If an SCE is founded with a purpose to deny employees the right of involvement or restrict the right, holding of negotiations is not restricted by the changes following the foundation of the SCE.

Negotiations shall be initiated at the written request of the RB or the employees' representatives of new undertakings and enterprises controlled by an SCE. In order to hold negotiations, arrangements for negotiations on the involvement of employees prescribed upon foundation of an SCE shall be applied, having regard to the following: i) after registration of the SCE, the participating companies are deemed to be the SCE and its subsidiaries and establishments respectively; ii) the SNB is, after the registration of the SCE, deemed to be the representative body of employees; and iii) the period prior to the registration of the SCE is deemed to be a period preceding failure of negotiations.

The significant changes mean changes in the structure, number of employees or registered office of an SCE, its subsidiaries and establishments if these had caused different application of standard rules according to provisions regulating employee participation. Unless proved otherwise, it is presumed that the significant changes indicate an intention to found an SCE in a manner which denies employees the right of involvement or restricts the right if the significant changes occur within a year after the registration of the SCE.

Finland.-The provision establishes a control period after the establishment of the SCE. If a decision with essential changes is made – and this could have been reason for more extensive representation –, new negotiations should be started on representation. This provision concerns, for example, situations, where the SCE is established from subsidiaries and during the period the parent takes over the SCE. This concerns also the situations, where SCE is established in states with no system of representation and is then transferred to state with the system, or SCE is established without participation because of some criteria and the amount of employees is increased after that. The provision goes so far as to regulate the process of proving this (possibility to counterproof). New negotiations must not be effected if it is shown that there is a acceptable reason for the change and it was not possible to do that change before the establishment of the SCE. This would guarantee reasonable decision-making also after the establishment and during the control-period.

Germany.- Article 43 SECBG implements Art. 13 SCE-Directive, providing that: "A SEC may not be misused for the purpose of depriving employees of participation rights or withholding such rights. Misuse shall be deemed to exist where, (…), changes in the structure of the (SCE) take place within one year following its establishment which lead to employees being deprived of participation rights, or to such rights being withheld".

The national law includes a time limit of one year which states that if during that period there are substantial changes in the composition of the SCE (without negotiations), it is up to the management to prove that the purpose of the change was not to deprive employees of their rights. After the deadline of one year only the presumption is dropped.If there is misuse renegotiations concerning the participation rights on the employees of the SCE shall be held at the instigation of the management of the SCE or the SCE-Works Council. In so far misusual behaviour is a structural change necessitating renegotiations, as required in § 18 sub. 3 SCEBG.

On the other hand, article 66.1 of the Council Regulation could be a problem. According to it *"*an SCE may be converted into a public limited-liability company governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved". At first sight, this provision seems to enable only a change of legal form. But the retransformation of an SE with codetermination (originally

formed in Germany) later registered in GB into a public limited company could lead to a "flight from the codetermination", because neither the agreement on employee participation nor the participation by operation of law (standard rules for participation) would be applicable as long as the parties have not taken measures against this case in the agreement.

Italy.- Implementing art. 13 SCE-Directive, the Italian legislator provides that "*when, after the registration of SCE, essential alterations arise in the SCE, in participating companies or subsidiaries, aimed to deprive employees of rights to employee involvement, a new negotiation shall begin. This negotiation starts at the request of employees' representatives in subsidiaries or establishments of the SCE and takes place following the procedure provided for in articles (...), having regard to the situation existing in the period when negotiation (...) started".*

Nevertheless, the appropriate measures provided by article 13 of the SCE-Directive have to be implemented by a new negotiation. This provision seems to be very confusing since the provision of a new negotiation could represent a loophole for the workers' right to involvement, because it entrusts employees' representatives to take the necessary steps to start the negotiation, which is, in the Directive's idea, a step to be taken by the company. So, in case of no demand of a new negotiation by the employees' representatives, the misuse of procedures will not be sanctioned.

Lithuania.- If "shortly"[3] after the establishment of a SCE, essential changes take place in the SCE or in its subsidiaries, which clearly show that the purpose for the establishment of the SCE was to deprive the employees of the right to be involved in decision making, it is necessary to start new negotiations. Essential changes in a company means changes in the number of the employees of the SCE or its subsidiaries or changes in the manner of incorporation of the company which would have extended the rights of the employees to be involved in the management of the company if they had been implemented before the establishment of the SCE.

Poland.- Polish legislation states that, when in the SCE, its subsidiaries or establishments the considerable changes relating to the structure, number of employees, and in the case of the SCE to the registered office too, have taken place after registration of the SCE and the intent of the changes is to deprive of or infringe the employees' rights in the sphere of involvement, negotiations so as to conclude the agreement on employees' involvement in changed conditions are continued. The representative body is entitled to demand that negotiations are held. The provisions relating to the arrangements for the involvement of the employees within the SCE are applied to the negotiations mentioned above. It should be underlined that the rights and obligations of the SNB are vested in the representative body and the rights and obligations of the participating companies are granted to the SCE, its subsidiaries and establishments.

Spain.- Spanish law specifies the legal consequences of the wrongful use of the establishment of an SCE to the detriment of the right to involvement.

[3] The term "shortly" is defined neither in transposition law nor in other labour legislation. It was left to the discretion of the court to decide but it it doubtful that the court wil consider it longer than 12 months

This supposition is defined through a court ruling declaring that the operation establishing an SCE, or the substantial changes undertaken in the SCE once it is established, had the purpose of either depriving employees of their right to involvement or were detrimental to these rights. In any case, the production of a detrimental or harmful result on the involvement of employees is not enough; *animus nocendi* is required, as inferred by the use of the adverb "intentionally" in the regulation.

Once the legal sentence acknowledging this harmful intention is passed, and when the sentence is final, national law establishes the holding of a new negotiation, as long as the RB or the employees in the new establishments or subsidiaries of the SCE so request it. Negotiation is subject to the general rules, although with the following three clarifications by which the references to these rules will be: i) participating legal entities must be understood as the SCE and its establishments and subsidiary companies; ii) the moment prior to establishment of the SCE will be the moment of the end of negotiations without agreement; and iii) SNB will be RB.

Sweden.- The national law states that the rules governing SCE may not be misused with the aim of removing or denying employees their rights to involvement. Where major changes occur or are such that the employees should have been more involved in the changes made prior to registration of the European company, the changes in question shall be considered to have been made with the aim of removing or denying employees their right to involvement unless the company can show that the changes were introduced for a different reason. A time frame of one year is set regarding major changes that occur within the year of the European company being registered. If the employees should have been more involved, the SCE should be considered to have made a breach against the law, and shloud pay damages.

United Kingdom.- Regulation states that an employee representative, or, if there is no representative, an employee, can complain to the Central Arbitration Committee (CAC), if he or she believes that a cooperative society is misusing an SCE to deprive employees of their rights to employee involvement or to withhold rights from them. In the case of a complaint made before the SCE has been registered, or within 12 months of its registration, the burden of proof is on the company that it did not misuse or intend to misuse the procedures. The CAC can require the company to take appropriate action to ensure that employees are not being deprived of their rights or having their rights withheld.

3.2 Provisions applicable to establishments and subsidiaries of the SCE that are located in each Member State

3.2.1 Field of application

As has been pointed out in the first pages of this report, SCE-Directive and, therefore, transposition laws define two large types of rules or provisions, depending on the territorial scope of legal implementation. On the one hand are the "main" provisions, that are applicable to the European company as a whole, where the registered office is located in a specific Member State; their legal effects cover the organisational body of the SCE and its subsidiaries and establishments, including those outside the territory of the specific Member State. On the other are the "accessory" provisions, which are applicable to the subsidiary companies and establishments that are located in the territory of a Member State exclusively,

of an SCE (or of a subsidiary or, given the case, of the participating companies of the SCE) which has its registered office in a different Member State. Each and every one of the main provisions established in SCE-Directive have been examined elsewhere in this report. We shall now analyse those provisions included in the second group of provisions, the "accessory" provisions.

3.2.2 Employees´ representatives

A. General considerations

1. The SCE-Directive uses the expressions "employees' representatives" or, simply "representatives" on different occasions. Thus, as an example, the term "employees' representatives" is used in sections (5), (11) and (12) of the introduction to the Community regulation, in arts. 2.e), 3.1, 3.2.b (last paragraph), 10.2 (paragraph 2), 11 (paragraph 2), 12 (paragraph 1), 14.1 and, lastly, in section e), Part 2 of the Annex. On the other hand, the term "representatives", although stated on less occasions, may be found for instance in art. 3.2.b (paragraph 1).

   Despite the frequency with which they are used, these expressions are not used with a single meaning; quite the opposite, a double meaning may be found which, in the legal context of the Directive, may be qualified as strict or original, in the first case, and derived in the second. On occasions, less frequently, the term adopts the strict or original meaning, coinciding with the express definition contained in art. 2.e); that is, "employees´ representatives means employees' representatives provided for by national law and/or practice". This is the meaning found in section (5) of the Introduction as well as art. 3.2.b (last paragraph) of the Directive and in section e), Part 2 of the Annex. At other times, more frequently, this term is not used in the meaning expressly defined in art. 2.e), but is equivalent, in a derived form, to employees' representatives in the SCE or its several units (participating legal entities, concerned subsidiaries or establishments). This is the interpretation found when the term is mentioned in the Introduction to the Community regulation or in the remaining precepts of the Directive.

   However, trying to provide a clearer legal content to the second of these meanings, the derived meaning, we may undoubtedly state that, for the Community legislator, the term "employees' representatives" is a *synthesis term* comprising or grouping four clearly different institutions or manifestations of employee representation; these are: the SNB, RB, the employees' representatives in the framework of information and consultation procedures and, finally, the members of administrative and supervisory bodies.

   Throughout its articles, the Directive, as seen earlier, states provisions of a different nature with regard to the competences and functioning of some, and not all, of these representation manifestations. This is the case for the SNB or the RB. However, the Community regulation does not offer any legal provision on the means by which these representatives access these specific representation institutions. It does not do so inasmuch as the SCE-Directive refers this issue to national legislations and practices. Undoubtedly, this is the case with regard to the SNB as established by art. 3.2.b, whereby "Member States shall determine the method to be used for the election or the appointment of the members (..)".

   The decision of the Community legislator to grant full legal competences to national laws on this issue is due to the great diversity of rules and practices existing in the

Member States with regard to the procedures to appoint representatives, making it impossible to establish a single and uniform model. The Community regulation maintains in this way a full effect, or if preferred, a maximum respect to the diversity of national procedures. The constant use of the expressions "election" and "appointment" in the Directive is a proof of this.

2. This study does not in any way intend to provide a substantive content to the term "employees' representatives" in the first of the meanings used in the SCE-Directive. Such an analysis would greatly exceed the purpose of this report – and indeed the task entrusted – and would surely require consultation of many other sources besides the ones used here. The objective sought is different, focussing, precisely, on giving an account of how "employees' representatives" – understood in the derived meaning – are elected or appointed in regulations throughout the EU.

   Prior to starting this analysis, it wouldn't go amiss to carry out two preliminary observations that, together and simultaneously, intend to be observations with regard to method and content. The aim of the comments below is not to repeat, in all its breadth and complexity, the legal scheme of the national system of election or appointment of "employees' representatives" in the SCE. With a more selective dimension, the aim is to highlight or emphasize the most singular aspects or most outstanding features of this scheme.

   In most national laws – and this is the second observation -, the procedures to elect or appoint employees' representatives are common to three of the four representation institutions in the SCE in charge of specifying and articulating the right to involvement of employees; that is, for all bodies except employees' representatives in the administrative or supervisory body of the SCE. Pursuant to this, we now inform that, unless clarified otherwise, the procedures studied below are valid for these three institutions.

B. Analytical comments

Austria.- Austrian members of the SNB and RB are appointed by a resolution of the works committee, of the works council (in the case where a works committee does not exist in a company), of the central works council (in enterprises) or of the group representative body (in corporate groups) (art. 218 ArbVG). This means that if there is a group representative body it is this body that appoints the Austrian members without any intervention of the other bodies. The only exception is if there are any (central) works councils within the corporate group which are not represented by the group representative body. In this case, the chairmen of those councils have to be invited to the meeting, in which the appointment of the members takes place. Insofar they are counted as members of the group representative body (§ 218 Abs 3 ArbVG). Generally speaking, it is possible that certain companies do not have any of those bodies. If it would be the case, this company would not be able to appoint members of the SNB or RB. However it is not very common, because is very easy in Austria installing a work council or other representative bodies.

The competent institution has to take into account that there should be at least one member representing each participating company which has employees in the Member State concerned. Such members may also include representatives of trade unions whether or not they are employees of a participating company or concerned subsidiary or establishment. The decision is taken in the presence of at least half the members and with a majority of

those members' votes that represent an absolute majority of the employees in the group, enterprise and company. Every involved company is represented with at least one member in the SNB. The RB elects the members of the administrative or supervisory body.

Belgium.- Employees' representatives in the SCE are appointed through a complex procedure in which a number of representation institutions can intervene one after the other. The Belgian law provided for a cascade. Firstly, priority is given to work council (*conseils d´entreprise*). So, the employees´ representatives of the participating companies, concerned subsidiaries and establishments are appointed by and amongst the members of this body, of the work council. Secondly and given the case that there are not Works Councils, the appointment in participating companies, concerned subsidiaries and establishments is made by and amongst the members of the work prevention and protection councils (*comités pour la prévention et la protection au travail*). When the former councils do not exist, the *Commission Paritaires* (a body at branch level of representatives of management and labour organisation) may authorise the trade union delegations of participating companies, concerned subsidiaries and establishments to appoint the employees' representatives of the SCE. If no works council, work prevention and protection councils exist, and in the absence of authorisation from the joint committee, it corresponds to the workers of the participating companies, concerned subsidiaries and establishments to elect or appoint the representatives of the SCE. In any case, the appointment of members may include a representative from the representative trade unions, regardless of whether this person is employed or not by the participating company, concerned subsidiary or establishment.

In a case of a multitude of participating companies, situated in Belgium, those companies without works councils, *comités pour la prévention or délégués syndicaux* will not have part in the vote at all. According to a grammatical reading of the provisions, only the companies with works councils or *comité pour la prévention et la protection* or with délégués syndicaux seem to have a vote. This might seem contrary to article 3. 2) in SCE-Directive. The problem can be solved, as the national report argues, by an interpretation in conformity with the Directive. This article stresses the idea that the SNB should be a body *representative of the employees of the participating companies and concerned subsidiaries*. Therefore, it is important to apply the provision in a way which guarantees that the workers' representatives of all the companies are involved in the determination of the Belgian representation.

Cyprus.- The members of employees´ representatives that take part in the special negotiating body are elected along with their substitutes in the following priority: i) From the existing trade union organisations that represent the employees; and ii) where there are no such organisations, directly by the employees by means of direct elections.

The employees´ representatives must include as far as possible at least one member that will represent every participating legal entity that has employees, without however there being an increase in the overall number of members. The methods used for the election of the representatives must promote gender balance by ensuring, as far as possible, the participation of the two genders in the special negotiating body with regard to the analogy of the number of men and women in the totality of the employees.

"Election" means the procedure in the course of which voting is carried out for the purpose of appointment of employees´ representatives, a procedure which if requested by 1/5 of those present who have a right to vote can be carried out by secret ballot.'

Czech Republic.- The members of employees' representatives of an SCE shall be nominated by the national employees' representatives at a joint meeting. The Czech Labour Code identifies trade union organizations as employees' representatives. In the case that a trade union is not operating in an undertaking, employees have the right to establish a works council and select a representative for the area of work safety and security who can not simultaneously be a member of the works council. Elections of works council members and the representative for the area of work safety and security can be held at the same time. The regulation does not allow the co-existence of union organizations, works councils and a representative for the area of work safety and security within one undertaking. Where there is no employees' representative in an SCE, its subsidiary or establishment, the employees may elect a representative.

Employees may also be represented by a person not employed by the participating legal entity, subsidiary or concerned unit of the company if this person is authorised by, and represents to, the trade union organization of these employees.

Denmark.- Employees' representatives of an SCE are elected by and among the members of the works councils. If there are no works councils, they are elected by the shop stewards. Denmark has not made use of the possibility to include trade union representatives who are not employees in the concerned company. If this is requested before, the election of members from and among the works councils or shop stewards may be supplemented by representatives of groups who are not represented in the works councils or the group of shop stewards.

Estonia.- The Estonian legislation establishes two forms of employees' representatives. An employees' representative is: i) an employee of an undertaking who is elected by the members of a union of employees or ii) who is elected by a general meeting of employees who do not belong to a union of employees to represent the employees in labour relations with the employer. The trade union representative represents employees who are trade union members and the other representative represents employees who do not belong to a trade union. In order to represent both groups of employees, the representative of the one group needs authorization from the other group[4].

Employees' representatives of the SCE (or a participating legal entity and a concerned subsidiary or establishment) shall be elected by the general meeting of employees. The procedure for the election shall be approved by the general meeting of employees. The election procedure shall ensure that all employees have the possibility to participate in the elections. If several participating companies and concerned subsidiaries or establishments are located in Estonia, a joint representation formed by the employees' representatives shall elect the employees' representatives of the SCE.

The joint representation shall take the following conditions into account upon election of a representative or representatives of Estonia in an SCE: i) if possible, each participating company is represented in the SNB through at least one member; ii) if the number of

[4] Starting from 1 February 2007, a new Employee Trustee Act has been passed which abolished the old Employees' Representative Act.

Estonian members in the SCE is smaller than the number of participating companies located in Estonia upon foundation of the SCE, the participating company employing the largest number of employees is taken into account first. If Estonia has the right to elect additional members to an SCE, these members shall be elected pursuant to the same procedure.

Finland.- Employees employed by an SCE in Finland have the right to select a representative to the SNB by agreement or election. If employees cannot reach an agreement concerning the procedure, the occupational safety delegates representing the greatest number of workers and waged employees shall jointly arrange an election or other selection procedure in such a way that all employees have the right to participate therein.

Germany.- The employees' representatives of the SCE are chosen by an elective body (*Wahlgremium*) drawn from the works council structure, taking into account the possibility of having central/group works councils covering several workplaces. The complex arrangements for choosing employees' representatives in Germany reflect the existing industrial relations systems, so it is no shock that these representatives are elected through the powerful works council systems.

German legislation regulates the election procedure in detail, establishing a complex scheme of rules for the composition of this elected body depending on the structure of the SCE. Specifically, the national law differentiates between four hypotheses: i) Composition of the elective body in the case that only one group of companies from within the country is involved in the establishment of the SCE: the elective body shall consist of the members of the group's works council (so-called *Konzernbetriebsrat*) or, where no such body exists, the members of the company works councils (*Gesamtbetriebsrat)* or, where no such bodies exist, the members of the works council (*Betriebsrat);* ii) Composition of the elective body in the case that only one company from within the country is involved in the establishment of the SCE: the elective body shall consist of the members of the company works council (*Gesamtbetriebsrat)* or, where no such body exists, the members of the works council (*Betriebsrat);* iii) Composition of the elective body in the case that only one establishment from within the country is involved in the establishment of the SCE: the elective body shall consist of the members of the works council."; iv) Composition of the elective body in mixed cases. Where one or more groups of companies or non-affiliated companies are involved in the establishment of the European company, or where independent establishments are affected thereby, the elective body shall consist of the employee representatives at the group, company and establishment levels. Where, in these circumstances, there are no employee representatives, the members of the elective body (*Delegierte)* are the employees by means of a direct vote. The election shall be initiated and conducted by an election committee chosen at a meeting of the employees to which the management of the group, company or establishment issues invitations to attend.

Finally, election by means of a secret and direct ballot *(Urwalh*) is possible in the case that there are no employee representatives. In this case, the election shall be initiated and conducted by an election committee chosen at a meeting of the employees to which the management of the group, company or establishment issues invitations to attend. The election of the members of the special negotiating body shall be in accordance with the principles of proportional representation. The principles of majority voting shall be applied where only one nomination for election is submitted. Each nomination by the employees shall be signed by one twentieth of the employees who are entitled to vote, but by no less

than three and no more than 50 persons who are entitled to vote; in establishments which normally have 20 or fewer employees entitled to vote, it shall be sufficient for the nomination to be signed by two persons who are entitled.

In all hypotheses referred, the elective body shall consist of no more than 40 members. Where this maximum would be exceeded, the number of members of the elective body shall be reduced using the *d'Hondt* seat distribution system. At least two thirds of the members of the elective body representing at least two thirds of the employees shall be present at the election. Each member of the elective body shall have as many votes as the number of employees they represent. Members shall be elected by a simple majority of the votes cast.

Hungary.- There are two singularities in Hungarian legislation. Firstly, affecting the capacities of the RB with regard to the social representatives in the administrative and supervisory bodies of the SCE. In this sense, the RB does not only have the position to nominate or recommend employees' board representatives, but it is also entitled to withdraw them from the board. This stipulation is analogous with the procedures applied in the nomination of members of the SNB and representative body, and in line with the national law on board representation. The second singularity refers to the criterion used by this regulation for the allocation of seats of employees' representatives in the aforementioned bodies. Pursuant to this legislation, they shall be distributed in proportion to a number of employees in the subsidiaries and other establishments.

Ireland.- The members of SNB or the RB are appointed by trade union representatives. In the event that there are no employee representatives, the employees of the SCE concerned will still have the right to elect or appoint such representatives. The Irish law covers this requirement and also states that those who are eligible to stand for election, when nominated by a trade union or an accepted body recognised by the participating company or by at least two employees, are i) an employee who has worked for a participating company operating in Ireland for at least one year; ii) a trade union official or an official of an accepted body, regardless of whether this person is employed by the participating company or not.

Italy.- The Act so named "Workers Statute" (WS), from may 1970, recognised the right to trade union representation within undertaking employing more that 15 workers. Article 19 of WS, in its original text provided that in order to establish a trade union representative body (RSA) workers had to refer to the most representative trade union confederations at national level, or to the trade unions which had signed the collective agreement applied within the enterprise. This article was modified by a referendum (June 1995), so that in order to constitute a RSA workers may only refer now to the trade unions which have signed the collective agreement applied in the enterprise.

In July 1993, a tripartite agreement among trade unions (CGIL, CISL and UIL), employers' associations (CONFINDUSTRIA, INTERSIND) and the Government has provided a new model of trade union representation in the workplace. So the Italian experience is characterized, at plant level, by the presence of the Trade union unitary representative body (RSU), linked, *de facto*, to CGIL, CISL and UIL. Two thirds of RSU members are elected and their seats are allocated proportionally to the number of workers' votes; one third is designed by the above mentioned trade unions and the seats distributed between trade unions representatives that have taken part to the election with a list of candidates. RSUs can subscribe collective agreements at plant level and they are entitled to the information and consultation rights provided by national collective bargaining and by the law. Hence, the

Italian system, as argued by the national report, provides for a single channel of representation in the workplace with some aspects of the dual channel of representation, linked to the election mechanism of the two third of the representatives, although on trade unions lists. The association of cooperatives and trade unios subscribed to an aplly the same rules valid for the employees´representtives of the private sector. The Cooperative Society applies the Protocol, signed on 13th Septemnre 1994, which contains the same rules on the RSU provided by the Protocol of 23rd July 1993 and 20th Decembre 1993 for the private sector. The RSU are in cooperatives with the rules established by the Protocol of 13th Septembre 1994.

The Italian Legislator has harmonized the procedure of election and appointment of SNB and RB members to the procedure provided for election and appointment of national employee' representatives. The transposition law provides that these are elected or appointed within members of RSU or RSA by the RSU or RSA themselves in agreement with trade unions that signed the existing collective agreements. With regard to this provision, the Legislative Decree specifies that this method can be used only for the "first phase of application". This formulation is not clear, because it suggests that a different regulation shall be applied for the future.

The Italian legislation establishes that members of the SNB can also include representatives of trade unions whether or not they are employed by a participating company or concerned subsidiary or establishment.

When in the undertaking or in the establishment there are no employees' representatives, trade unions which have signed the collective agreement applied to the companies participating in the SCE have the right to elect or appoint the SNB members.

Hungary.- The employees´ representatives are to be appointed by the works council (*Üzemi Tanács*, ÜT) of the establishment. Where there is a central works council (*Központi Üzemi Tanács*, KÜT) in place, this one appoints the representatives of SCE. If there is more than one central works council, the employees´ representatives are appointed at a joint meeting of the central works councils. The national law requires that "every effort shall be made" to ensure that the employees of every participating company are represented on the special negotiating body. And also allows that a trade union member representing the employees who are not an employee of the participating company, subsidiary or establishment concerned may also be appointed to the special negotiating body.

The Hungarian legislation provides that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of SNB. If a particular establishment does not have a works council, directly elected employee representatives are invited to the meeting of the existing ÜT of other establishment(s) to appoint SNB members. In this respect, these representatives are deemed to be members of the ÜT or KÜT.

Latvia.- National law recognises two types of employees' representatives: trade unions and authorised employees' representatives. The first one are elected according to rules of statute of the trade union. The second one may be elected in an undertaking that employs five or more employees. Authorised employees' representatives shall express a united view with respect to the employer. This one, the employer, is not required to deal with discordant

opinions of different employees' representatives. Before consultations with an employer, trade unions and employees' representatives must agree on common view.

Employees' representatives of the SCE in Latvia shall be elected by both categories of employees' representatives or, in the absence thereof, by all employees according to the procedure for election of employees' representatives specified by the law. The national law does not provide any rule in the case that there are more participating entities than seats.

Lithuania.- The employees' representatives (members of the SNB or the RB) shall be appointed by the institutionalised employees´ representantives and onlu in exceptional case by employees themselves (in the general meeting). Where several participating legal entities, subsidiary or establishment are registered in Lithuania and there is one or more concerned establishments operating, these employees' representatives shall be appointed by a joint agreement of the employees or their representatives of all those companies and/or establishments.

If the national employees' representatives fail to appoint the members of the SNB or of the RB within 30 days of the provision of information, they shall be elected by secret ballot at a general meeting of the employees. The general meeting may be organised by any representative of the employees. The same procedure shall be applicable if the establishment or the company does not have employees' representatives. But in such a case, the general meeting of employees shall be called by the managing or administrative organ of the company or by the manager of the establishment.

Since the law does not differentiate, the representative shall necessarily be an employee to become a member of the SNB or of RB.

Malta.- Employees' representatives can be any Maltese employee employed in that participating company or in its concerned subsidiaries who are on a fixed-term or indefinite contract, and including part-time employees whose part-time employment is their principal employment in respect of which social security contributions are payable under the Social Security Act.

Moreover, Maltese legislators state that, if the management of that participating company so permits, a representative of a trade union who is not an employee of that participating company or its concerned subsidiaries or establishments, is entitled to stand as a candidate for election as a member of the special negotiating body in that ballot The national law struck a cautious note by inserting the proviso "if management so permits".

The members of the SNB or of the RB are elected amongst and by a ballot from amongst eligible persons who satisfy the criteria just explained above. In view of this, Maltese legislation regulates the ballot system in detail, with different rules depending on whether the election is for ordinary or additional members. In relation to the election of *ordinary* members: i) if the number of members are entitled to elect is equal to the number of participating legal entities which have employees in Malta, there shall be separate ballots for the Maltese employees in each participating legal entity; ii) if the number of members are entitled to elect is greater than the number of participating legal entities which have employees in Malta, there shall be separate ballots for the Maltese employees in each participating legal enity and the management shall ensure, as far as practicable, that at least one member representing each such of this participating is elected and that the number of

members representing each participating legal entity is proportionate to the number of employees in that participatin; iii) if the number of members entitled to elect to the special negotiating body is smaller than the number of participating legal entities which have employees in Malta, a single ballot shall be held in which all the employees of the participating legsl entities shall be entitled to vote.

In relation to the ballot of *additional* members the management shall hold a separate ballot in respect of each participating legal entities entitled to elect an additional member. In turn, the management shall: i) appoint an independent ballot supervisor to supervise the conduct of the ballot of Maltese employees. In the case where there is to be more than one ballot, the management may appoint more than one independent ballot supervisor each of whom shall supervise such of the separate ballots as the management may determine, provided that each separate ballot is supervised by a supervisor; ii) ensure that there is no interference with the carrying out of his functions from the management; iii) comply with all reasonable requests made by a ballot supervisor for the purposes of, or in connection with, the carrying out of those functions.

Netherlands.- The Dutch employees' representatives are appointed by the works councils of the Dutch participating companies, their subsidiaries and establishments. If there are umbrella works councils that solely represent participating companies, their subsidiaries or establishments, these umbrella works councils appoint the members of the SNB. In the complete absence of works councils, the representatives will be elected by the employees in the participating companies, their subsidiaries or establishments. Lists of candidates for these elections can be proposed by unions and/or one or more individual employees who are not members of a union. If only one or some of the participating companies, subsidiaries or establishments has no works council, while others do, the employees in the companies without works councils have the right to be consulted on the composition of the SNB. This consultation procedure has not been elaborated. However and according to the SCE-Act, they have the right to go to court if they are of the opinion that there has been a breach of law. In principle, every Dutch entity will send at least one representative, unless this has the effect that the total number of representatives will rise above the number stipulated in the Directive.

Poland.- The Polish legislator used the system based on appointment and, in the case when no such possibility exists, on election. The right to appoint members of the SNB was conceded to establishment-level trade union organizations. However, it does not concern all trade union organizations. The national law stipulates that, if employees of the participating company, concerned subsidiary or establishment are employed in Poland by one employer, the appointment of members of the SNB is performed by the representative union organization at work. Pursuant to legislation, a union organization becomes representative when it: i) is an organizational unit or a member of an upper-level union organization considered to be representative (i.e. which is the representative organization in the meaning of the Act on Tripartite Commission for Social-Economic Affairs) or ii) unites at least 10 per cent of the employees employed with an employer.

The candidates, who received the majority of votes in turn, enter into the composition of the SNB. However, in the case when they have received equal number of voice in turn, but the number of place for occupation is smallest than the number of these candidates, the assembly

of workers shall perform election among them again In the case of not working the representatives unions, the candidates are appointed by the assembly of staff.

When more than one representative union organization exists, all the organizations shall appoint members of the SNB. If the representative union organizations do not reach an agreement, these members are elected by an assembly of staff exclusively from among candidates reported by these organizations.

Portugal.- When the members of the SNB or the RB are to be elected or appointed in Portuguese territory, the following criteria are applicable: i) if there is, in Portuguese territory, only an SCE, the members are appointed by agreement between their workers' committees and the unions, or by the workers' committees when there aren't unions; ii) if there is, in national territory, an SCE and one or more subsidiaries, the members of the representative body are appointed by agreement between their Workers' Committees and the Union Associations, or by the Workers' Committees when there aren't Union Associations; iii) if there is, in national territory, an SCE, one or more subsidiaries and one or more establishments, the members of the representative body are appointed by agreement between their Workers' Committees and the Union Associations, which should represent at least the employees of the mentioned establishments;iv) the members of the RB are appointed by agreement between the Union Associations, which represent together, at least, 2/3 of the employees of the SCE, its subsidiaries and establishments; v) the members of the representative body are appointed by agreement between the Union Associations each one representing 5% of the employees of the SCE, its subsidiaries and establishments, when the previous situation (iv) is not applicable.

When the previous criterions cannot be applicable, the members of the RB are elected in direct and secret suffrage from the candidatures presented by at least 100 or 10% of the employees of the SCE, its subsidiaries and establishments, situated in national territory. The convening of the elections, the candidatures presentation, the vote, the determination of the results, their publicity and the legality control are regulated by the law applicable to the European Works Council .The entities responsible for the nomination, appointment or election of employees' representatives shall respect the principle of equality and non-discrimination, namely promoting gender balance (article 41.2). Portuguese bill allows representatives of trade unions that represent the employees of participating legal entities, subsidiaries and establishments, to become members of the representative body, whether or not they are their employees (article 43.2 by reference to article 42.2). The same regime is applicable to the election or appointment of employees' representatives when it was established one or more information and consultation procedures instead of a RB. These criteria are also applicable to the election or appointment of the members who represent the employees in the management or supervisory organ of the SCE.

Slovakia.- Members of the representative body, who should be elected or appointed from employees of the SCE with its registered seat in the Slovak Republic, shall be appointed by employees' representatives during their session of employees' representatives active at the employer. If there are no employees' representatives active in the SCE, concerned subsidiary or establishment, employees themselves may elect their representative who shall represent them on the joint session. The division of votes shall be done proportionally to number of employees represented. This shall apply also in the case of election or appointment of

employees' representatives of employees of concerned subsidiary or establishment located in the Slovak Republic when the SCE itself is located outside of the Slovak Republic.

Number of seats in the representative body shall be determined in that way that for each 10%, or part thereof, of the SCE's employees employed in the same Member State, counted from the total number of all SCE's employees taken together, there shall be one seat in the representative body. The number of the representative body members shall correspond to the number of seats determined in accordance with first sentence

Slovenia.- Article 8 of the SCE-Act states the provisions for election of members of the special negotiating body from the Republic of Slovenia. It is provided that employees' representatives from the Republic of Slovenia shall be elected to the special negotiating body by all employees *by secret ballot*. Works councils, representative trade unions in a participating legal entity, concerned subsidiary and establishment and at least 50 employees in a participating legal entity, concerned subsidiary and establishment are entitled to nominate candidates for membership of the special negotiating body. Hence, the Slovenian SCE-Act guarantees that also the employees not being formally organised may be nominated candidates for membership of the SNB, hereby providing the threshold of at least 50 employees. There is, however, no specific provision ensuring that, as far as possible, such members of the SNB from Slovenia should include at least one member representing each participating legal entity which has employees in Slovenia. The national law does not provides any rule in the case that there are more participating entities than seats.

Spain.- In the Spanish system of industrial relations, there are two paths for the representation of employees' interests in undertakings: on the one hand, unit or elected representation, made up of works councils and personnel delegates and, on the other, trade union representations, made up of trade union sections and trade union representatives. Spain answers in this way, paradigmatically, to the *double channel* model of representation. The SCE-Act acknowledges the condition of employees' representatives to both representations. This system is applicable to cooperatives.

In the framework of accessory provisions, Spanish legislation opts for appointment as the procedure applicable to establishments located in Spain of the SCE, its subsidiaries or participating legal entities. The appointment of employees' representatives to the SNB and the RB is subject to the following provisions: i) representatives will be appointed either by agreement of trade union representations that, as a whole, add up to a majority of the members in the works council or councils and staff delegates, or by a majority agreement between unit representatives. The Spanish legislation does not confer priority at any of these procedures. The representation of SNB members shall be as established by each appointment act. Whenever this is not specified, national law assumes that all those appointed in representation of employees in Spain, represent all of these employees; ii) the appointment of the SNB must fall on a staff delegate, member of the works council or a worker in any of the participating legal entities and concerned establishments and subsidiary, or on a trade union representative who is a member of the most representative trade union at state level or representative in the scope of the participating legal entities. On the other hand, appointment of the representatives of the RB must fall on an employee of the SCE or its establishments or subsidiary who holds the seat of unit representative (staff delegate or member of the works council) or trade union representative (trade union delegate): iii) when more than one member of the SNB has to be appointed in representation of the workers employed in Spain,

the law establishes that there is, amongst these members and "to the extent possible, as allowed by the number of members to be appointed", at least one representative of each of the participating legal entities with employees in Spain; iv) the appointment of additional representatives who, given the case, should join the SNB will be undertaken pursuant to the provisions established in paragraph i) and ii) above. In any case, the procedure must refer exclusively to the scope of the participating legal entity that will disappear as a separate legal entity after the establishment of the SCE; and v) to the effects of implementation of the provisions stated in paragraph I) and ii) above, workers employed in Spain by a participating legal entity will be represented in the SNB when an employee of this participating appointed in Spain is a member thereof. When amongst the representatives appointed in Spain there is a trade union representative who is not an employee of any of the participating legal entities, this representative will have the representation specified in the appointment act. If none is specified, the law assumes that all workers employed in Spain by the participating legal entity are represented in the NB through this trade union representative.

The provisions regarding appointment that have been examined are also applicable to the employees' representatives who must join the administration and supervisory body in the SCE when, by virtue of applicable legislation, it corresponds to each Member State to specify the manner of election or appointment of members of this body.

Sweden.- The Swedish members of SNB and RB are appointed by the local employees' organisations that are bound by collective agreements to the participating legal entities, subsidiaries and establishments. Where there are several local employees' organisations bound by collective agreements and these cannot agree otherwise, priority shall be given to that organisation that represents the largest number of employees. It means that if an agreement cannot be made, the organisation that represents most employees shall be given priority.

If more than one member shall be appointed the order set out in the Board Representation Act shall be followed. If more than 4/5 of the employees that are bound by a collective agreement belong to the same local employees' organisation, this organisation appoints all representatives. However if another organisation represents at least 1/20 of the employees bound by a collective agreement, this organisation gets to appoint a substitute. If none of the organisations represents more than 4/5 of the employees that are bound by a collective agreement, the two local employees' organisations representing most employees that are bound by a collective agreement get to appoint each a representative and a substitute. If three representatives shall be appointed, the largest of the two organisations gets to appoint two representatives and two substitutes.

Where none of the participating legal entity, subsidiary or establishment is linked by collective agreements, these members are appointed by employees' organisations representing the largest number of organised employees in theparticipatin legal entity, subsidiary or establishments (if the local organisations cannot agree otherwise). Where no such organisation referred exists, members are selected by the employees of the participating legal entity, subsidiary or establishment.

United Kingdom.- In the English legislation, there are two types of employee representative: i) trade union representatives, who normally take part as negotiators in the collective bargaining process on behalf of the employees involved . They could be external trade union officers; and ii) other employees of the company who are elected or appointed as

employee representatives and obtain information about the terms and conditions of employees or the activities of the business which are particularly important for employees.

The mechanism for choosing UK members of the SNB and RB is by ballot of employees, unless there is a consultative committee, in which case it can appoint the UK members. The Regulation makes the management of the participatinglegal entities responsible for arranging the ballot, although they must appoint one or more independent ballot supervisors to supervise its conduct. Management must also, as far as reasonably practicable, consult with UK employees' representatives on the conduct of the ballot and publish the balloting arrangements in a way which, as far as reasonably possible, brings them to the attention of all employees. Employees who consider that the ballots have not been conducted in accordance with the Regulations can bring a complaint to the CAC, which has the power to make management modify its arrangements.

The issue of how UK employees should be grouped together for voting is also dealt in the law. They are to vote in companies so that if the number of special negotiating body members to be elected is the same as the number of companies involved, each company elects one member. If the number of companies is less than the number of special negotiating body members, then, as far as practical, each company elects one member and the additional members are allocated in a way which takes account of the number of employees involved. If the number of companies involved is more than the number of special negotiating body members then, the largest company or companies each elects one member, and those smaller companies where there is no ballot, vote in one of the ballots for the larger companies. Where additional members are being elected, in respect of companies that will cease to exist because of a merger, they should be elected in separate ballots. All UK employees are entitled to vote. And also all employees may stand as candidates, as may trade union representatives who are not employees. But this second group can only stand if company management permits this.

3.2.3 Protection of employees´ representatives

A.General considerations

1. As we have already mentioned when analysing the common provisions, first paragraph of art. 12 SCE-Directive establishes that the members of the SNB, the RB, employees' representatives in the administrative or supervisory bodies of the SCE and, in short, employees' representatives exercising functions in the framework of information and consultation procedures have the right, during the exercise of their functions, to "the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment". Second paragraph of the same article specifies the content of the guarantee, that is extended in particular "to attendance at meeting" of all the representatives in SCE (SNB, RB, under the agreement or administrative or supervisory organ) and "to the payment of wages" for theses representatives "during the period of absence necessary for the performance of their duties".

2. Most of the national laws (Austria, Cyprus, Denmark, Estonia, Germany, Hungary, Italy, Latvia, Malta, Poland, Portugal, Slovenia, Slovakia, and United Kingdom) transpose this set of guarantees in a mechanical manner; that is, they reproduce the terms of the Directive in a strict literal fashion.

It is not the purpose to enter into a detailed study of the several guarantees that each European law establishes in favour of those employees in a representative post and, hence, of those employees with representative roles in the sphere of the SCE or any of its company or economic units. Highlighting a double order of national provisions will suffice for what is interesting for our purpose. On the one hand, those those establish some specific guarantee only for employees who are representatives of the SCE; on the other, provisions which, although affecting all employees' representatives, establish a guarantee that is not usually common in most EU countries.

B. Analytical comments

Austria.- According to national legislation, employees' representatives are independent of employer's directives, protected from discrimination, they have the right to time off to perform their specific obligations and enjoy a more extensive protection against notice and dismissal. Merely, the entitlement of members of the SCE works council to time off for training without loss of wages was explicitly codified in § 251 Abs 2 ArbVG.

Belgium.- At present no statutory provision extends the Statute of 19 March 1991 to workers'representatives in the SNB or in the representative body. The statute affects the functioning of the judicature, which is beyond the regulatory powers of the social partners.

Cyprus.- The members of the special negotiating body, of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SCE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the Agreement on Workers' Representatives (Ratifying) Law of 1995. This national law ratified the 1971 WLO Convention on Workers' Representatives.

The protection referred shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred or any meeting of the administrative or supervisory organ and to the payment of wages for members employed by a participating company or the SCE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

Czech Republic.- The SCE-Act stipulates that a member of the special negotiating body, employees' representative body and employees' representatives shall, in the extent provided by the Labour Code, enjoy protection against discrimination and disadvantage, as well as time-off with a remuneration of his/her wage. However, a member of the RB shall not enjoy advantages in the exercise of his functions.

An additional protection is provided to members of trade unions. An employer is prohibited to terminate an employment contract with an employee, member of a trade union who is a representative, without prior consent of the relevant trade union. If the trade union does not agree, the employer in order to terminate the employment contract shall bring an action in court for termination of this contract

Estonia.- The SCE-Act, implementing SCE-Directive, provides for the guarantees of employees' representatives participating in involvement. The provisions concerning the guarantees prescribed for employees' representatives in the Republic of Estonia Employment

Contracts Act (hereinafter TLS), apply to the guarantees of members of SNB of RB and employees' representatives connected with the performance of informing and consulting duties and employees' representatives belonging to the supervisory or administrative board of an SCE, and who are the employees of the SCE or its subsidiaries and establishments or a participating legal entity, provided that they are employed in Estonia. Employees' representatives specified afore shall be granted a period of absence to represent employees to the extent necessary for the performance of their duties arising from the act. Average wages shall be continued to the employees' representatives for the period of absence. The period of absence to represent employees depends on the extent necessary for the performance of duties. Concrete hours for representing employees´ at local level are prescribed by the national law.

The national legislation prohibited to terminate an employment contract with a representative of employees as a result of his or her lawful activities in representing the interests of the employees. Termination of an employment contract on the initiative of an employer with an employee who represents employees is permitted during the term of authority of the employee and for within one year after termination of the authorisation only with the consent of the labour inspector of the location (residence) of the employer, except on some rare cases. A labour inspector shall justify to an employer in writing the reasons for granting or refusing to grant consent to the termination of an employment contract with a representative of employees. Before making the corresponding decision, the labour inspector shall submit a written request to an organisation representing employees in order to obtain an opinion concerning the termination of the employment contract with the representative of employees, if such representative has been elected by the organisation representing employees. The organisation representing employees shall provide a written opinion within one week as of the date of the request. An employer who terminates an employment contract with a representative of employees is required to give advance notice to the representative in writing one month earlier than the general terms prescribed by the TLS.

Finland.- Protection means, firstly, protection against the termination of the employment contract of a shop steward or an elected representative. It applies to the protection against termination for members of SNB and RB, employees' representatives in connection with information and consultation procedures and members representing employees belonging to the supervisory or administrative organ of an SE, where these are employees of an SCE, its subsidiaries or establishments or employees of a participating legal entity working in Finland.

An employer shall also release employees' representatives referred from normal work for such time as they require for participating in the meetings of a SNB or RB or in an information and consultation procedure, in order to negotiate the arrangement of employee involvement or to participate in the meetings of the SCE's administrative or supervisory organs and for the directly related joint preparation of employees' representatives for the procedures referred to. Any consequent loss of earnings caused thereby shall be compensated. Any other release from work and compensation for loss of earnings shall in each case be agreed between the relevant employees' representative and employer. Participating legal entities are responsible for the costs of the functioning and negotiations of the special negotiating body, including the reasonable cost of experts, in order for the special.

Germany.- The national law, implementing art. 12 SCE-Directive, provides that, to carry out theirs tasks, the members of SNB and RB, the employee representatives involved in any other manner in an information and consultation procedure and the employee representatives on the supervisory or administrative board of the SCE who are employees of the SCE, its subsidiaries and establishments, or of one of the participating legal entity, subsidiaries or establishments, shall enjoy the same protection and safeguards as the employee representatives under the laws and customs of the Member State in which they are employed. This shall apply in particular with regard to: i) employment protection; ii) participation in meetings of the respective representative bodies and iii) continued payment of wages.

Hungary.- The provisions of the Labour Code concerning the members of works councils shall apply for the protection of members and alternate members of the special negotiating body and representative body employed within Hungary, employees' representatives participating in the information and consultation procedures and employee delegates represented on the Administrative or Supervisory Board.

The SCE-Act transposes the second paragraph of Article 10 and establish that the former employees´ representatives, during the time-off for their service in the representative bodies, are entitled to the 'leave of absence' allowance (in Hungarian: *távolléti díj*). The Labour Code includes the rule of calculation of such an allowance, which in practice equivalent to paying the regular wage for the individual concerned.

Ireland.- The normal workplace protection under national legislation is extended to all employee representatives involved in the SNB and in information, consultation and participation, in particular with regard to attendance at meetings of the SNB or the representative body and the payment of wages. In accordance with existing Irish labour legislation, these employee representatives are protected from dismissal or any unfavourable change to their conditions of employment or any other unfair treatment, including selection for redundancy, and from 'any other action prejudicial to his or her employment'.

Draft Regulation 21 goes further. It provides employee representatives with the right to attend meetings of the SNB or the representative body and to: i) be provided with any reasonable facilities, depending on the needs, size and capacity of the company or SCE and without impairing its operations, including time off to perform the duties of the representative function and ii) the payment of wages for any period of absence in connection with these duties.

Any infringement of this rules will be considered as an infringement of the Unfair Dismissals legislation and an action can be taken under that law. And SCE-Draft states that these rights are "in additional to and not in substitution for any rights enjoyed by employees representatives" under existing Irish legislation.

Italy.- The Italian Legislator recognises to the SNB members, to the representative body's members and to employees' representatives in the administration or supervisory board, carrying out their duties, the same protection and guarantees usually recognised to RSU members and Trade unions officials. So, they are protected against employer's acts as dismissal and transfer, and give them the right to take paid time off periods to perform their functions.

This protection involves the right to the payment of wages for members employed by a participating company or its subsidiaries or establishments during the period necessary for the performance of their duties in case of attendance to meetings of the SNB or representative body, or any other meeting of the administrative or supervisory board.

Par. 3 of article 10 of the Legislative Decree provides that the parties shall define all the arrangements related to the functioning of the employee representative in SE, in its subsidiaries or establishments or participating companies.

Latvia.- The same rights and duties that are specified in the Labour Law for authorised representatives of employees shall be applicable to members of a special negotiating body, members of a representative body and employees' representatives during the fulfilling of the duties of information and consultation. Members of a SNB, RB and employees' representatives shall be granted a vacation so that they may fulfil the duties of information and consultation, maintaining the average earnings for this time period.

Lithuania.- The contracts of employment of employees´ representatives may not be terminated during the exercise of their functions at the initiative of the employer without the consent of the employees' representative (i.e., trade union body or works council) that appointed them. If these members were elected by a meeting or conference of the employees, the territorial office of the State Labour Inspectorate shall have the right to give its consent to their dismissal.

The employees' representative body must take a decision as to whether to satisfy the employer's application for its consent to the dismissal within 14 days from the receipt of said application and shall submit its consent or refusal to dismiss an employee in writing. If the representative body of employees fails to reply to the employer within this period, the employer shall be entitled to terminate the employment contract. The employer shall be entitled to contest the refusal to give its consent to the dismissal in court. The court may reverse such a decision if the employer proves that this decision substantially violates his interests. An employee, who has been dismissed from work in violation of the requirements of consent, must be reinstated in his former position by a decision of the labour dispute resolution body.

Malta.- Malta Regulation states that members of SCE in exercising the functions of their duties enjoy the same protection and guarantees provided for employees representatives in the Employment and Industrial Relations Act (EIRA 2002). This Act does not recognise as a 'good and sufficient' cause' for an employer to dismiss the employee 'who at the time of dismissal was a member of a trade union, or is seeking office as, or acting or has acted in the capacity of an employees' representative'.

Moreover Regulation states that the protection and guarantees shall apply in particular to attendance at meetings of the employer and employees´ representatives and to the payment of wages for members employed by a participating company or the SCE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

Netherlands.- The national law of transposition has reformed the Dutch Civil Code, in the sense that the provisions on protection of employees´ representatives (including provisions on dismissal) are extended to members, candidate members and former members of the SNB, the representative body or an information and consultation procedure.

Poland.- The employer shall not serve notice or not terminate employment contract on the members of the SNB, the members of the representative body and any employees' representatives in the supervisory or administrative organ of an SCE in the course of mandate or within one year period after its expiration without a permission of the trade union organization active at work establishment which represents the employee. If the employee is not represented by the trade union organization active at work establishment, the permission is granted by the regional labour inspector with territorial competence for the employer's registered office. The same procedure is applied when the employer serves notice to change terms of work or pay to disadvantage of the employee

Portugal.- According to the SCE-Act, the general rules regarding the protection of employees' representatives in Portuguese framework are also applicable in the context of an SE. In this sense, the Labour Code starts by previewing a general principle of non discrimination. It prohibits and considers null and void any agreement or employer's act (*e.g.* lay-off, transfer) that harm in any way the employee due to the exercising of rights regarding participation in collective representation structures.

These employees benefit from a credit of hours equal to the one given to Workers' Committees' members (25 hours per month) to perform properly the duties that have been assigned to them, which counts as time of effective service, including salary. However, they can not accumulate credits of hours when they are members of more than one collective representation structure. They also benefit from a paid credit of time to attendance meetings with the SE, its management or supervisory organ, as well as preparatory meetings, including travelling time. Other absences of those employees to perform their duties and that exceed the credit of hours are considered justified absences and count as time of effective service, except for purposes of salary.

Those employees can not be transferred without their consent, except when such transferral is a result of the total or partial moving of the establishment in which they render service. When that occurs, it's required the prior notification of the structure of which they are members. Finally, protection is also provided for in cases of disciplinary proceedings and lay-off in several ways.

Slovakia.- Article 48 (1) of the SCE-Act transpose nearly verbatim the art. 12 SCE-Directive. What is missing under this translation is wording "who are employees of the SCE". Problematic is also wording of the Slovak law: "concerned subsidiaries or concerned establishment" as these are defined as subsidiaries establishments, which is proposed to become subsidiary establishment of the European company, and not that which already is European company's subsidiary/establishment.

The content of these guarantees refers, firstly, the protection against discrimination and the right for paid days off at extends and under the conditions determined under the Labour Code. Paid day off shall be provided by participating legal entity with its registered seat in the SR also if the European company has or shall have its registered seat in the territory of different Member State.

Slovenia.- As regards the protection of employees' representatives, the SCE-Act refers to the Worker Participation in Management Act and the Employment Relationship Act. So, members of the SNB or RB are protected by the general Slovenian provisions on protection of workers' representatives.

In this sense, an employee representative may not without the consent of the workers' council: i) be assigned to another work post or another employer and ii) be included among any redundancies. Also, the employer may not terminate the employment contract during the entire period of their term of office and another year after its expiry.

Spain.- The Spanish transposition law formulates two specific guarantees. Firstly, these representatives are entitled to paid leaves needed to attend the meetings of the SNB, the RB, the administrative or supervisory body of the SCE, or meetings held in the framework of negotiated procedures of information and consultation. Regardless of this, members of the SNB, the RB and administrative or supervisory body of the SCE are entitled to a sixty-hour paid credit per annum to exercise their functions. This credit is added to the credit that may correspond in the case that these members accumulate, additionally, the condition of unit or trade union representative.

Sweden.- The rules about the protection of employees´ representatives are incorporated on the Trade Union Representatives Act of 1974. But this Act is only applicable for those trade unions bound by a collective agreement. However, even if there is not collective agreement concluded by the trade union, the employee representatives appointed by the organisation should be embraced by the protection founded on the Trade Union Representatives Act concerning the right to necessary time off for fullilling the commission, protection against deterioration of employment conditions, retained benefits when on leave and a priority right to continued employment at dismissal bebause of shortage of work. Beyond that, the general protection of employees concerning the freedom of association, employment protection and so on apllies to representatives Further, the agreement on the involvement of employees should explicity deal with the representatives´ right, which means that there is no difference made between representatives appointed by an organisation having a collective agreement or not.

3.2.4 Other topics

National legislations do not usually establish rules regarding the legal efficiency of agreement on involvement negotiated between the SNB and the competent body of the SCE. In the absence of specific provisions, the legal performance of these agreements is, thus, subject to the general rules in force in each specific system of labour relations.

The Portuguese and Spanish laws transposing the SCE-Directive are the exception to this general trend. The former states that the agreement concerning the creation of a representative body or an information and consultation procedure concluded according to the legislation of another Member State in which territory is situated the headquarters of the SCE obliges the subsidiaries and establishments situated in Portuguese territory, as well as its employees. The Spanish law establishes that those agreements “oblige all” the establishments of the SCE and its subsidiary companies included in their scope of implementation and located in Spanish territory, as well as its employees, during the time they are enforced. Hence, national law confers the same performance to all the agreements: general or *erga omnes.* Also, this legislation enounces a public territorial order clause in view of the agreements we are dealing with here, establishing that the validity and performance thereof must not, in any case, infringe or alter the competence of negotiation, information and consultation that Spanish legislation grants to the works councils, staff delegates and trade union organisations, “as well as any other representative body created for collective negotiation”

4. Right to involvement applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons

As detailed elsewhere in this report[5], Directive 2003/72/EC, in contrast to Directive 2001/86/CE, does not establish a single scheme for the right to involvement. On the contrary, it establishes a plurality of schemes depending, in principle, to the nature of the subjects that become partners of the SCE.

Specifically, the scheme for the right to involvement applicable to the European cooperative society established by, at least, two legal entities, is regulated in Section II, arts. 3 to 7 inclusive of the SCE-Directive. This scheme has been studied in the main body of this report. We shall now analyse the legal regulation of the right to involvement applicable in those European cooperative societies established exclusively by natural persons or by a legal entity and natural persons. In these cases, which are regulated by art. 8 SCE-Directive under Section III, the regulation of the right to involvement is, once again, not uniform and a second differentiation criteria exists.

4.1 The scheme for the right to involvement in SCEs employing at least 50 employees in total in at least two Member States

1. The first scheme for the right to involvement applicable in an SCE established exclusively by natural persons or by a single legal entity and natural persons is defined, by the concurrence of a double and cumulative criterion: firstly, with regard to the number of employees, which must exceed 50 in the organisation as a whole; secondly, it has a location or topographic scope since the number of employees required must be from at least two Member States.

   In these cases, the applicable scheme for the right to involvement is the scheme established for SCEs established by at least two legal entities or by transformation, without any variation or exception. To the extent that this scheme has been analysed in detail earlier, a reference to this analysis suffices at this point.

2. All of the national laws transposing the SCE-Directive, without exception, have included provision established in art. 8.1 thereof. Moreover, they have, without exceptions, transposed it word-for-word, literally. The absence of singularities should not be surprising, given the imperative nature of the Community precept, the wording of which does not allow any margin for discretion or differentiation to national laws.

[5] Vid. i*nfra*, 2.3

4.2 The scheme for the right to involvement in SCEs employing less than 50 employees in total, or more than 50 in one Member State only

1. SCE-Directive establishes a singular scheme for the right to involvement in those cases where the SCE employs less than 50 employees in total or, given the case, 50 or more employees in one Member State only. Specifically, in these cases, regulation of this right will be ruled by the following provisions: i) Provisions applicable to the right to involvement of employees in the SCE will govern for the cooperative societies in the Member State where the SCE has its registered office; and, ii) provisions applicable to the right to involvement of employees in subsidiaries or establishments will be applicable to cooperative societies in the Member States where they are located.

   The provisions described above constitute the general legal regulation scheme which must be complemented by two additional provisions. Pursuant to the first of these, the objective of which is the conservation of the *before-after* principle in the case of transferring, from one Member State to another, the registered office of an SCE governed by participation, "at least the same level of employee participation rights" shall continue to apply, using the language of the Community regulation.

   The second of these provisions, rather than complementing the general provisions, is an exception to them. Indeed, art. 8.3 SCE-Directive establishes, in a wordy manner that, despite the special scheme for the right to involvement in SCEs with less than 50 employees, or 50 or more employees in one Member State only, these rights may be as those established with general criteria as long as one of the following two circumstances take place, once the SCE is registered: i) it is so requested by "at least one third of the total number of employees in the SCE, its subsidiaries and establishments, in at least two Member States", or ii) the total number of employees reaches or exceeds 50 employees in, at least, two Member States.

2. Arts. 8.2 and 8.3 of the Community law have also been transposed by the vast majority of national laws. Again, the technique used is the literal transcription, *verbatim*, of the contents of these SCE-Directive precepts. The omission in Sweden is of the second paragraph; that is, art. 8.2. The position taken by Swedish governement was thar the aim with art. 8-2 is not to prevent the estblishment of a SCE, but only to prevent a registration without showing what kind of employee involvement that should apply. Hence, a registration referring art. 8.2 should be made if it is shown that no further measures need be taken in order lay down the procedures for involvement. So, in the proposal the governement forecasted that there would be reason to come back on the matter[6].

   The transposition technique used by the SCE-Act (Regulations) of United Kingdom for art. 8.3 requires a comment of its own. Regulation 6 (3) sets out the employments conditions – over 50 and in two members states – that are required. Regulation 6 (4) sets out the requirements for the request for negotiations to be valid – asked for by at least a third of the total workforce. However, the regulation also specifies that the request must

[6] Governement´s proposition 2005/06: 170, p. 34

be in writing and specifies the names of the employees making it. It does, however, permit the request to be either a single request, or a series of requests made over six months.

3. As mentioned above, the case established by art. 8.2 of the Directive (SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ less than 50 employees in one Member State) establishes a different legal scheme of the right to involvement within the SCE. On the one hand, the SCE itself is subject to the provisions applicable, generally to cooperative societies, in the Member State where the registered office is located. However, on the other hand, subsidiaries and establishments are subject to the provisions established for cooperative societies in the Member State where they are located. In short, the legal scheme for the right to involvement of employees of the SCE follows the criteria applicable to the accessory provisions.

   The configuration of an undertaking as a cooperative society does not always include novelty in the field of the collective right to involvement; thus, employees may elect either unit (personnel delegates and works councils) or trade union representatives pursuant to common legislation. These representatives may exercise the right to information, consultation or participation in the terms and conditions established by labour legislation.

   Implementation of the common scheme for the rights to representation and participation of the waged employees of cooperative societies, as established by labour legislation, is a general rule that is compatible with certain specialities, listed by the cooperative legislation. Specifically, Spanish legislation about Cooperative Society establishes a right to participation in the administrative board (RC) in favour of non-member employees of all cooperative societies. This precept provides that when a cooperative society has more than 50 permanent employees and a Works Council has been established, a non-member employee will be a member of the RC with the same rights and obligations as other representatives. Election and demotion of the council member corresponds to the body of representation. However, if several Works Councils exist, election is undertaken by all permanent employees of the cooperative society through direct suffrage.

5. Right to participation of employees in general meeting or section or sectoral meeting of the SCE

A. General considerations

Article 59.4 Regulation (EC) No. 1435/2003 establishes the possibility that, if the national legislation of the Member State where the European cooperative society had its registered office prior to the entry into force thereof allows it, the statutes of the SCE establish the participation of employees in general, sectoral or section meetings whenever employees' representatives do not control, in total, more than 15 per cent of all rights to vote.

This statement for the right to participation has been developed further by Directive 2003/72/CE, including its treatment in Section IV, art. 9, wich establishes that, within the aforementioned limits established by art. 59.4 Regulation (EC) 1435/2002, employees of the SCE and their representatives will be able to participate in these meetings, with the right to

vote, under three specific circumstances. Firstly, when the parties so decide it, expressed in the corresponding agreement on involvement and subscribed between the NB and the competent organ of the participating legal entities. Secondly, when a cooperative society governed by such system becomes an SCE. Finally, for any SCE that is not established by transformation, when one of the participating cooperative societies is governed by such system and, additionally, the following three conditions concur: i) no agreement on involvement has been reached in the period established[7]; ii) the standard rules, including those of participation, are applicable; and iii) the participating cooperative society governed by a system of this type has the highest percentage of participation to administration or supervisoy board among the participating cooperative societies prior to registration of the SCE.

As may be easily deduced, the source providing the right to involvement is not common to the three circumstances. In the first, the source is exquisitely conventional, in such a way that the mention contained in SCE-Directive does not have a ruling dimension: employees or their representatives will participate in meetings in the terms agreed. In the other two circumstances, however, the source acknowledging the right to participation has a legal origin.

Article 9 SCE-Directive has not undergone a common treatment in its transposition into national regulations, with three different criteria detected in this transposition. Firstly, we must mention those Member States which, prior to 21st August 2006, acknowledged in national regulations the right of cooperative societies' employees' participation in general, sectoral or section meetings (Denmark). Except for certain exceptions which shall be mentioned below, this group of countries have undertaken a literal transposition of the provisions established in art. 9 of the Community regulation. A second group of national laws have likewise transposed art. 9 thereof, although their legislations did not acknowledge participation rights prior to the abovementioned date (Austria, Czech Republic, Finland, Germany, Hungary, Ireland, Italy, Latvia, Malta, Netherlands, Lithuania, Poland, Slovenia, Spain and Sweden). In all cases, with certain exceptions that will be detailed below, national laws in both of these groups have undertaken a mimetic and mechanical transposition of art. 9 SCE-Directive; a mere transcription or literal reproduction of its contents.
Besides the above, a third criterion may be identified, including those legal systems that have neither acknowledged this right to participation nor have included the provisions established in art. 9 SCE-Directive in their respective transposition laws (Cyprus, Estonia, Portugal, Slovakia and United Kingdom). In these countries, the justification given is the absence of the implementation requirements established in art. 59.4 Regulation (EC) 1435/2003.

B. Analytical comments

Denmark.- Danish law permits the statutes of a cooperative to provide for the participation of employees' representatives in the general meetings, board of representatives, supervisory board, or in the section or sectoral meetings with voting rights. It did so before the adoption of Directive 2003/72/EC and it still does so. The national law allows that the statutes of a cooperative provide for no employee involvement at all in the undertaking's decision making process. No special conditions must be met in either case. There is free choice for the owners to organise worker participation in their undertaking as they please when they choose to give

[7] Vid. *infra*, IV.3.A.b.f´., point 14

the undertaking the form of a cooperative. Danish law neither prohibits nor requires workers/employees involvement in the decision-making process in a cooperative. It is usually assumed that the general practice in cooperatives, although there is neither obligation nor specific legislation for cooperatives, is that workers' representatives are members of general assemblies.

Lithuania.- SCE-Act states, that the rules on participation with voting rights in the general meeting or, if it exists, in the section or sectoral meeting, existed before transformation into ECS shall apply also in case when the ECS is established by way of transformation and its central management or the management of another level is in located in Member State, which the legislation or practice governs the implementation of these rights, unless the agreement of employee involvement in decision making at ECS stipulates otherwise.

If other cases where an SCE is established, the employees or their representatives shall have the right to participate with voting rights in the general meeting or, if it exists, in the section or sectoral meeting only if such rights are established in the legislation or practice of Member State, that is applicable to ECS, its subsidiary or establishments or in the agreement on employees involvement in decision making at ECS.

Netherlands.– SCE-Act has transposed art. 9 of Directive. However, it has also added to the catalogue established in this Community precept on the circumstances in which the right of participation of employees in general, or given the case sectoral or section, meetings is applicable, two new circumstances that are applicable to SCE not established by way of transformation (art. 9.3). These new circumstances are: i) all participating legal entities agree the application of the reference provisions and ii) the SNB did not decide to refrain or end negotiations. So the Dutch law is broader on this point.

6. Compliance with the SCE-Directive

A. General considerations

Article 14 SCE-Directive sets a double provision for Member States, which are closely linked between them. On the one hand, and generally, it entrusts Member States to ensure that the management of establishments of an SCE and the supervisory or administrative organs of subsidiaries and of participatinglegal entities, as well as employees' representatives and employees themselves abide by the obligations laid down by this Directive, "regardless of whether or not the SCE has its registered office within its territory" (art. 14.1). On the other, more specifically, this precept of the Community regulation also orders Member States to establish "appropriate measures in the event of failure to comply" with the Directive, ensuring the existence of "administrative or legal procedures available to enable the obligations deriving from this Directive to be enforced" (art. 14.2).

Pursuant to the aforementioned, the SCE-Directive confers to the EU Member States a wide scope with regard to the limitation and implementation of suitable measures to face possible non-compliance by the management bodies of the SCE, of the obligations established by the Directive. There are two general theoretical models in the transposition of art. 14.1 of the Directive. On the one hand, a model which may be qualified to have a dual manner specified by the implementation of both administrative and judicial procedures. On the other, the unit model, expressed in the implementation of a single procedure, of an either administrative or judicial nature.

Examination of the national transposition laws shows the inexistence of a dominating model. In the first group of countries that have opted for the dual model we find Austria, Cyprus, Estonia, Ireland, Latvia, Malta, Portugal, Slovakia, Slovenia, Spain or United Kingdom; however, national laws exist that respond to the unit model, choosing either the judicial (Belgium, Czeck Republic, Denmark, Hungary, Netherlands and Sweden) or the administrative procedure exclusively (Finland, Italy and Lithuania).

On the other hand, several legal systems entrust Labour Inspection with the role of supervising compliance of the obligations laid down by the Directive (Estonia, Malta, Portugal, Slovakia or Spain). Nonetheless, not many legal systems qualify as offences certain behaviours aimed to withhold or hinder the right to involvement exercised by the employees rendering services to an SCE (Cyprus, Finland or Germany and Slovenia). In this country, the criminal code defines certain breaches of the workers right of information and consukltation as a criminal activity.

B. Analytical comments

Austria.- ArbVG specifies the behaviour management that can be punished on an administrative way. Between others, they lie in the not compliance of the following obligations: to give the information that has to be included in the written request to form the special negotiating body, to change in the formation of the SNB if there's a change of structure with the participating companies, to establish the SNB, to inform the SNB about the formation of an SCE, to summon a meeting of the SNB two years after a resolution to abandon it, to inform the employees' representatives on all affairs concerning the SCE or her subsidiaries, to reject at the works council to establish the SNB, if the board of management refuses to do so and to continue with the structures of employee representations in participating legal entities which will cease to exist as separate legal entity. The administrative sanctions that might amount to € 2.180.

According to ASGG, it is also possible to take legal actions against those who counteract the above stated legal norms.

Belgium.- At present the transposition is restricted to a collective agreement declared generally binding erga omnes. Hence, the enforcement of the obligatuions stemming from this collective agreement has a dual character cobining administrative fines and criminal sanctions. Furthermore, trade unions have standing before the Labour Courst to enforce these obligations.

Cyprus.- Cyprus law provides that the person who violates the provisions of the transposing legislation is guilty of an offence and, where he is convicted, is subject to a penalty of 2 years imprisonment or to a fine not exceeding CYP 20,000 (approximately 35,000 Euro) or to both penalties. These are the only sanctions provided, and no differentiation is made between the violations of various sanctions. Thus the degree of seriousness of certain violations and the penalty to be imposed as a result of this seriousness is a matter that will be determined by the Courts and not the legislator. This is not necessarily negative as it would at first sight appear that the legislator gives the same weight to all the provisions of the legislation and may therefore deter an employer from violating what he may perceive as the less serious requirements.

In addition no provisions were made with regard to which authority would be responsible for ensuring that the national law was complied with, in other words, it is not made clear which

body will carry out inspections of SCE's to ascertain if the proper mechanisms have been put in place for the representation of employees. As there is no reference to inspections or supervision of the enforcement of this law, it is doubtful as to whether inspections will be carried out at all.

Czeck Republic.- The Statute of an SCE found to be at variance with the agreement on SCE employees' involvement, concluded under this Act, shall be null and void. The competent organ shall put the statute in harmony with the employee involvement agreement as soon as possible after a conflict between the statute and the agreement on involvement of SCE employees has been discerned. An involvement agreement in breach of the provisions of the SCE Act with view to the rights of the employees of an SCE shall also be rendered null and void. Hence the Czech SCE Act has transposed certain procedures ensuring the observance of the policies set by the Council Directive with a view to the involvement of SCE employees and the protection of their rights and powers. However, they differ from the procedures concerning the European Society, are less strict, and do not explicitly make the establishment of an SCE conditional on the establishment of an SNB, as in the case of a European Society.

Denmark.- Violations of the Danish Act on employee involvement in SCE-companies are punishable by a fine, see sections 49 and 50 of the Danish Act on employee involvement in SCE-companies. This sanction is the same as the sanctions used for similar violations of Danish company legislation. There is no indication in the Act of what the fine should amount to and no case law, see national report page 23.

Estonia.- The Act amending TKS provides for prohibition on hindering involvement of employees. It is prohibited to restrict the rights of the RB and the SNB, including to hinder and influence their establishment and operation, and the establishment and conduct of a procedure for informing, consulting and participation. It is prohibited to influence and hinder the activities of members of the RB, of members of the SNB and employees' representatives involved in a procedure for informing, consulting and participation through the restriction of their rights or allowing preferences.

Enforcement procedures for compliance with the Directive are provided for by the SCE-Act. State supervision over compliance is exercised by the Labour Inspectorate. Upon violation of the requirements, a labour inspector or the head of a regional office of the Labour Inspectorate has the right to issue a precept. Upon failure to comply with a precept, a labour inspector or the head of a regional office of the Labour Inspectorate may impose a penalty payment. The upper limit of of penalty payment for each imposition thereof is 50.000 kroons (3195,5824 €).

Violation of the obligation not to reveal any confidential information by the members of the SNB, of the RB, the involved experts and translators and the employees' representatives participating in a procedure for informing and consulting, if, during negotiations, the parties decided to establish one or more information and consultation procedures instead of a RB, is punishable by a fine of up to 100 fine units, which is 6000 kroons (383,4698 €). Extra-judicial proceedings concerning the misdemeanours of the TKS shall be conducted by the Labour Inspectorate. The provisions provided for in the implementation of the Directive are similar to the usual National ones.

Finland.- The supervision is delegated to the Ministry of Labour. The system is based on the Act on Personnel Representation in the Administration of Undertakings (725/1990, Personnel Act). It would cover all obligations of the employer in this law and the agreements established on the basis of the law. The obligation to release information also before the establishment would be covered too by this system. Before the establishment the fulfilment of the obligations would be sanctioned by non-registration. The imposing of the "conditional fine" (id est: default fine system, order to do something under penalty) system was made on the basis of "national discretion" and aims to the effective implementation of the obligations deriving from the Directive.

Hungary.- The Hungarian law stipulates that the representative body may bring the case before the Labour Court if the European company's Administrative/Management Board fails to act in accordance with the procedures laid down on the Act In such a case, the court acting in first or second instance shall issue a decision by non litigious procedure within 15 days. If the court finds that the rules of procedure have been breached, it shall order the correct implementation or repetition of the procedures concerned. There is another juridical appeal procedure: if the company has not provided the special negotiating body, the representative body or the employees' representative the required information, the Court of Registration, at the request of employees' representative body, may order it to do so.

Ireland.- The Draft Regulations provides that any dispute with regard to a relevant undertaking or SCE and employees or their representatives on the SNB, the negotiations, interpretation or operation of the agreement, the interpretation or operation of the standard rules, the protection of employee representatives and, in general, any complaint by an employee or his/her representative (or both) regarding the use of the SCE to deprive employees of their involvement rights or the withholding of those rights can be referred: i) to the Conciliation Service of the Labour Relations Commission (LRC) for mediation after all internal dispute resolution procedures have failed to resolve the dispute and ii) on to the Labour Court if intervention by the LRC cannot find a solution acceptable to both parties The Court may make a written recommendation to the disputing parties.

A dispute on confidential information may also be referred to the Labour Court by the relevant undertakings, the SCE, an employee or an employee representative, for determination. In this case, the Court will hear submissions from the disputing parties and can require any person to attend a hearing and to produce any documents it considers relevant to the dispute. All witnesses called to attend a hearing have the same rights and immunities as apply to a witness in a High Court case.

Italy.- In putting into effect article 14 of the Directive, the Legislative Decree provides the creation of an administrative body (*Comitato Tecnico di Valutazione*, hereafter CTV). This body has the assignment to evaluate the respect of the obligations laid down by the Legislative Decree.The CTV's members (five members in total) are appointed one by the Ministry of Labour and Welfare; the Ministry of Economic Development; the Ministry of Economy; the Ministry of Agriculture and the Department of Equal Opportunity. Within six months from the creation of the CTV, it had to be adopted a Regulation on its functioning and powers. Article 14 does not quantify the fines in case of non compliance with the legislative decree, probably it will be defined by the Regulation. In case of disagreement on the appointment of the third member, this is drawn from a list of six names suggested beforehand.The CTV closes the procedure no later than 15 days from the demand.

Latvia.- State Labour Inspection is the main institution responsible for supervision and monitoring of the implementation of labour legislation in Latvia. The officials of the Inspection have the rights: i) to carry out examination, control and investigation at the undertakings; ii) to request the information necessary in order to verify that the requirements of labour legislations are observed; iii) to take decisions regarding matters of employment legal relationships and to issue warnings and orders to employers and iv) to impose, in accordance with the procedures prescribed for the examination of administrative violations, administrative sanctions on employers.

In practice, the employees' representatives may inform State Labour Inspection if the employer breaks the law. The Inspection may intervene only if the breach is undisputable, for example, the employer refuses to disclose none information to employees' representatives. However, if there is a dispute about the scope of confidential information the employees' representatives have to apply to the civil court where the procedure could be very time consuming.

Lithuania.- On November 2005, the Code of Administrative Penalties of the Republic of Lithuania was amended with the aim of incorporating breaches to legislation regarding the right to involvement of employees of an SCE.

The fines can to be considered as proportionate and dissuasive. But there is no provision on the administrative responsibility for all type of violations of the law; so, there are not, between others infringements, for violations of information and consultation procedures, misuse of the procedures, refusal to grant statutory rights to the RB or its committee or non-observation of the standard rules.

The breach of the duty of confidentiality by employees' representatives constitutes the offender both in civil liability, under general terms of law, and in disciplinary liability.

Malta.- Malta Regulations states that any person who fails to comply with any obligation imposed on such person under these regulations shall be guilty of an offence and shall, on conviction, be liable: i) to a fine (*multa)* of not less than 10 liri[8] and not more than fifty liri for every employee of all the participating companies, concerned subsidiaries or establishments in relation to a failure by the competent organ of the SCE, of the participating company or concerned subsidiary as the case may be, to comply with any requirements provided for in these regulations and ii) in relation to any other offence, a fine (*multa*) of not less than five hundred liri and not more than five thousand liri.

The Malta Regulations do not refer to the Industrial Tribunal as the institution with the jurisdiction to impose these penalties. In the absence of such a reference the jurisdiction of imposing such fines falls on the Civil Court.

Netherlands.- The relevant court is the Enterprise chamber (*Ondernemingskamer*) of the Amsterdam court. Every interested party may apply to this court to request that the provisions must be adhered to. The SNB and RB may not be condemned to bear the costs of a procedure. The SNB and RB may request the Enterprise chamber to end their duty of

[8] Malta Lira is equivalent to circa 2.33 Euro

confidentially, on the ground that, after consideration of the relevant circumstances, this duty is unreasonable.

When information is refused to the SNB, its members or the SCE-works council, these may request the court to oblige the other party to supply the desired information, on the ground that, after consideration of the relevant factors, the refusal to supply the information is unreasonable.

Portugal.- Portuguese legislation classifies the offences that entail infractions into very serious, serious and minor. The following are very serious infractions: the infringements of SNB creation rules, of the agreement which created a representative body (or an information and consultation procedure) related with information, consultation and meeting rights, of the standard rules, of the representative body's rights, of the annual report presentation and subsequent meeting, of the information and consultation rights of the representative body in exceptional circumstances and also of the financial and material resources applicable both to SNB and the representative body. The following are serious infractions: the infringement of negotiations with a view to determine the involvement of employees, the opposition to the presence of experts in those negotiations meetings, the disregard of the rules of the agreement which created a representative body (or an information and consultation procedure) related with the financial and material resources and, between others, of the meeting procedures applicable to exceptional circumstances. Finally, the infringement of the obligation imposed to the management or supervisory organ of the SCE to send to the relevant service of the ministry responsible for labour issues copy of the agreement constitutes a minor infraction.

The infringement of employees' representatives' protection rules or of the obligation to communicate information or undertake consultation mistakenly invocating that it could harm or seriously affect the operation of the undertaking or establishment constitutes a serious infraction.

When the information, consultation or participation rights are violated, employees´ representatives can use the judicial general procedure to suit the employer asking the court to condemn him to give out the information he had been denying or to conduct the consultation or participation he is obliged to. However, the absence of a specific procedure with urgent nature, as it is regulated for collective redundancies, dismissal of employees' representatives or work accidents, makes it difficult to receive information or conduct consultation in appropriate and useful timing.

Slovakia.- Labour Inspection is authorized to perform random controls/monitoring of labour law provisions adherence. If the Labour Inspection would reveal any breach of labour law provisions, it can penalize an employer breaching this provision. Employees or their representatives may contact the Labour Inspection and object the breach of labour law, too. Inspection should review such a motion and decide on appropriate sanctions.

Employees or their representatives as well as employers may seek their right before general civil courts. Labour law lawsuits are considered to be general civil lawsuits. The result of such a lawsuit can be especially obligation of an employer/company (or employee/representative) to do something or cease to do something. Also compensation for loss or damage, if it was caused by the breach of law, can be provided by the courts decision.

Slovenia.- SCE-Act gives the Employment Tribunal (ET) jurisdiction for settling disputes in connection with the implementation of the European Cooperative Society. ET is a specialised court, dealing with matters related to the employment relations, including cases of individual and collective nature.

In addition to this, the Slovenian law (ZSDU) states that disputes between the works council and the employer shall be settled by arbitration. The arbitration panel shall be composed of an equal number of persons appointed by the works council and the employer and a neutral chairman whose appointment has been agreed to by both parties to the dispute.

Furthermore, ZSDU provides that the works council and the employer may by mutual agreement set up a permanent arbitration body in the company. If a company has set up a permanent arbitration body the workers' council and the employer shall make a list of arbitrators for individual arbitrations. Whenever an arbitration procedure has been initiated the workers' council and the employer shall each appoint their arbitrators from the list.

Spain.- The Spanish legislation defines as a labour infractions with regard to the right of involvement of employees in European companies “the actions or omissions of the different responsible subjects against” provisions of the law of transposition, as well as against “its development provisions, the provisions of other Member States enforced in Spain, agreements held pursuant these provisions, and against “legal clauses in collective agreements that complement the rights acknowledged in them”.

This legislation also classifies failures to comply with the rights to involvement in the SCE as serious, and very serious. Theses ones, are the following: i) actions and omissions that prevent the start and development of negotiations with employees’ representatives with regard to provisions regarding the rights to involvement; ii) actions and omissions that prevent the functioning of the SNB, the RB or, given the case, the information and consultation procedures as established in legal terms or by agreement; iii) actions and omissions that prevent the effective exercise of the rights to involvement, including abuse in qualifying the information provided as confidential, and abuse in qualifying information as secret in order to legally withhold information from the representatives; iii) decisions adopted in the framework of the SCE-Act that involve direct or indirect discrimination due to gender, nationality, origin, race, ethnic group, marital status, religion or beliefs, political ideas, sexual orientation, language and adhesion or not to a trade union, its agreements or the exercise of trade union activities; and iv) wrongful establishment of an SCE with the purpose of depriving employees of the rights to involvement they were already entitled to, or withholding them.

The social jurisdiction has a general competence to know and to resolve “any litigious issues that appear in the application” of SCE-Act This general attribution has the following two exceptions. Firstly, where there are plans to impugn administrative sanctions, these cases are the competence of the contentious-administrative courts. Secondly, substantiation of lawsuits regarding the position and activities of employees participating in the decision-making and supervisory organs of the SCE, are the competence of the civil courts.

Sweden.- The dominating model in Sweden is of judicial nature. The negotiating body and the representative body may acquire rights, assume obligations and bring Actions before a court of law or other authority. Legal proceedings in connection with the Act shall be brought before the Labour Court as the first instance.

United Kingdom.-. The main mechanism for dealing with complaints is the CAC. Complaints may be taken to the CAC where it is considered that the following circumstances apply: I) the failure of a company to provide information when it first takes the decision to set up an SCE; ii) a SNB has not been set up or not set up correctly; iii) balloting arrangements for the election of UK members of the special negotiating body are defective; iv) a consultative committee does not have the right to appoint members of the special negotiating body or has appointed them incorrectly; iv) the SNB has taken a decision incorrectly or has failed to publish that decision correctly; v) information has unreasonably been described as confidential and vii) information is being unreasonably withheld.

The procedures of the CAC require a complaint to be in writing and the CAC will make the enquiries "it sees fit and give any person it considers has a proper interest in the complaint or application an opportunity to be heard". Declarations from the CAC are also in writing with reasons and have the force of a High Court declaration (Court of Sessions in Scotland). Where it seems that the two sides might reach a conciliated agreement, the CAC should refer the issue to the Advisory, Conciliation and Arbitration Service (ACAS) – an official conciliation body. If the two sides cannot agree, the issue returns to the CAC for resolution. Appeals on points of law go to the Employment Appeal Tribunal.

The CAC is also the body to which complaints are made that the company has failed to meet its obligations under either an agreement or the standard rules on employee involvement. If a member of the employee representative body, or, where there is no such body, an information and consultation representative, or an employee, considers that the company is not complying with the terms of the agreement or the standard rules, he or she can make a complaint to the CAC. If the CAC agrees, it makes an order stating the steps to be taken, the date of failure, and the time limit, within which the company must comply. The individual who originally brought the complaint can also ask the Employment Appeal Tribunal to impose a penalty on the company for its failure to comply. However, the CAC cannot require the company to reverse its actions.

7. Link between the SCE-Directive and other provisions

1. Article 15 SCE-Directive provides some rules with the finality to organise the link between the Directive itself and other European standards. In this sense, firstly, it establishes that when an SCE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings, specific provisions of both national legislation and legislation of the Member States shall not apply to them or their subsidiaries (paragraph 1, art. 15.1). However, this general rule shall not apply when the SNB has decided by agreement not to open negotiations or to terminate ongoing negotiations (paragraph 2, art. 15.1). Secondly, provisions on the participation of employees established by national legislation and/or practice, other than those implementing SCE-Directive, shall not apply to the SCE included in the scope of implementation the Directive (art. 15.2). Thirdly, SCE-Directive shall not prejudice: i) the existing rights to involvement of employees other than participation in the bodies of the SCE as enjoyed by employees of the SCE and its subsidiaries and establishments, provided by national legislation and practice in the Member States; and ii) the rights to participation of employees in the bodies of subsidiaries of the SCE laid down by national legislation and practice (art. 15.4). Finally, SCE-Directive gives to the Member States

the option to take the necessary measures to guarantee that the structures of employee representation in participating companies which will cease to exit as separate legal entities are maintained after the registration of SCE.

2. The article here examined does not show transposition problems, inasmuch as the incorporation into national law is undertaken, usually, in a literal manner (Austria, Finland, Ireland, Italy, Malta, Spain or United Kingdom). Nevertheless, several national laws have not exerted the option contained in art. 15.4 (Italy and United Kingdom), and therefore do not include any measures aimed to guarantee, after SCE registration, the maintenance of employee representation structures in the participating legal entities that cease to exist as differentiated legal entities. In some countries, the transposition of this precept has been undertaken partially, omitting a section thereof (in Portugal, art. 15.2) or, even, all of it (Slovenia).

8. Effects of transposition on the internal laws of member states

A. General considerations

1. 1.It appears very difficult to limit the effects of legislation regarding the SCE on internal laws, considering the limited amount of time passed since the transposition of the SCE-Directive into European legal systems. This also explains the complete lack of case law references with regard to the application and interpretation of the legal scheme for the this societas .

2. Nevertheless, some impact of the transposition law in their internal law may be mentioned. This impact may be appreciated, at least, in two legal spheres: in Labour law and in Cooperative Law. The purpose of the observations that follow is, in short, to explain these influences in some internal regulations.

B. Analytical comments

Cyprus.- Before harmonisation with the EU *acquis*, the legislation was largely underdeveloped with regard to employee's rights, mainly because so many sectors of employment are covered by collective agreements, and therefore it was perceived that overall, employment relations in Cyprus do afford adequate protection to the employee.

Following harmonisation of Cypriot law with the EU *acquis*, a number of terms and conditions of employment previously determined by collective agreements are now legally enforceable, combating somewhat the vulnerable position of private employees. Employees of Cooperative Societies are employed on the basis of private agreements and not collective agreements. As a result they are afforded the minimum of protection as given in existing legislation. If this law relating to the role of the employee in SCE's had not been implemented the same situation would have existed with regard to the European Cooperative Societies.

This law has therefore essentially filled in many gaps that would have been missing had it not been enacted, and offered the mechanisms and structure for the proper representation of the employees of an SCE. It will therefore have an impact on the decision of a cooperative in Cyprus to become an SCE and it might also add to the existing legal provisions with regard to the informing and consulting of the employees in order to form part of the "practice"

which is often referred to in labour law but rarely pinpointed. Such an impact cannot be assessed as yet due to the very short period that it has been in force. Furthermore, the legislation itself has received little attention from the date of its publication, mainly as there are few large cooperative societies who have the required establishments and employees to proceed with forming an SCE.

Czech Republic.- In addition to adopting an SCE-Act, it was necessary to harmonize the requirements and content of that directive with the legal regime of the Czech Labour Code especially in the field of negotiating the involvement of employees of an SCE. It was also necessary to harmonize the directive transposed into the SCE Act with the legal regime of the Business Code and the Notarial Order of the Czech Republic. In this connection, the Czech Ministry of Justice issued in 2005 has implemented a Decree, on the documents to be presented to the notary so as to obtain certification for the relocation of the registered address of an SCE.

Marginal increase of material costs is to be expected in association with newly added duties of the registration courts which will include provision of registering SCEs in the Commercial Register and forwarding notifications to the EC Official Prints Office as required by the Regulation. It is, however, not possible to assess the amount of these costs as it is impossible to estimate the level of public interest in forming SCEs. The social implications of the new legal adjustment should be favourable as the formation of new subjects could lead, in the event of their efficient development, to potential increases in the State's tax revenues and an extended offer of jobs on the market, including jobs for socially handicapped persons. However, more precise quantification is not possible. The adjustment also introduces a new area of activity for notaries in producing public deeds but the associated costs will be borne by the private sector and not by public budgets.

Estonia.- Transposition of the Directive into Estonian law has certainly impacted on the development of national law. Labour law did not know the concept of involvement of employees. Transposition of the Directive into Estonian law has created a legal basis for the employees´ right to be informed, consulted and, if it is a case, to participate in activities of SCE. Legal regulation on the involvement of employees has most certainly benefited to better understanding on the involvement of employees and to stressing the importance of promoting the social dialogue in the undertakings.

Transposition of the Directive has influenced the national procedure of electing the employees´ representatives. The national model on the election of employees' representatives – where the representative was elected by the employees belonging to a trade union and by the employees not belonging to a trade union and in order to represent both groups, the representative needs the authorisation from the other group – provided for by the TUIS was not followed by the TKS. Nevertheless, the new legal regulation can be a challenge to employers, as well as to employees.

Lithuania.- Lack of awareness of employees about use and methods of information and consultation procedures is one of the reasons why they have rather small impact on the situation of social dialogue in the enterprises. Sometimes the employees even express their clear doubts about necessity to possess such information. The collective bargaining or the right to strike traditionally are seen by employees as more effective means for determination of working conditions or solving the problems of employment. In addition, the negative experiences with the extensive participation rights of the soviet type trade unions in the

socialist past evoke small interest of employees in this issue. By majority of employers and society including jurisprudence these rights are to some extend considered as restriction of employers' initiative what is foreign body in the market-oriented economy.

National legislation establishes neither the right of workers (their institutionalised representatives) to elect/appoint members of the Board of Supervisory Board nor impose the obligation on the shareholders to discuss the possibility of involvement of employees in formation of the organs of the company. These rights may be established in the collective bargaining agreements or in the agreements concluded by employer and works councils (latter agreements are recognised by the Law on Works Councils but they have no normative force). However, no such agreement was registered so far.

The limited impact may be attributed to the fact that there is no SCE set up in Lithuania and no procedures concerning information and consultation established so far.There seems to be no practice of the participation of the representatives of Lithuanian employees in the activities of foreign SCE.

Malta.- The Malta Board of Cooperatives, which is the registrar and supervisory organ of Maltese cooperatives, has expressed its concern about the right granted to legal entities to register as SCE. It is afraid that the core principles, laid down in this Act, which govern the operations of co-operatives may be undermined. These principles include among others democratic control (one person one vote) and autonomy and independence. This Act, enacted in 2001, has taken pains to endow these principles with a higher status and to make them more effective in practice. The law now requires them to be respected and adhered to by all persons applying and interpreting the provision of the Act. Co-operatives and their controllers are now required to consider these extraordinary principles as fundamental to their polices and day-to-day co-operative activities. In this sense, it appears safe to suggest that the co-operative principles now enjoy a freshly enhanced status, and are certainly no longer a vague *mission statement*

Slovenia.- Taking into account that the SCE-Act entered into force only a few months ago, it can be expected that it is still too early to discuss its impact on the Slovenian industrial relations. Nevertheless, considering the Slovenian legislation on cooperatives it cannot be concluded that the SCE national act and directive provide wide statutory autonomy. Comparing the SCE-Act and the national Cooperatives Act it can be concluded that the latter in many ways contains more modest provisions. SCE provisions are important also because they regulate certain issues that are not expressly regulated in the Cooperatives Act and open certain choices, e.g. system of management, transfer of seat etc., not foreseen by the national law on cooperatives. Since 1999 members of the Slovenian Parliament have on more than one occasion filed proposals for amending the Cooperatives Act. Some of those were not successful, whereas others were. Notwithstanding this fact, the proposals made were rather poorly explained and were regulating only very specific issues. Consequently, there is a wide agreement among the commentators that the Cooperatives Act does not take effects in accordance with its purpose. Many things have changed as regards the development of law and economic activities in Slovenia since 1992. Consequently, it is widely believed that a new law on cooperatives is needed in Slovenia. It is quite certain that when this will happen the SCE-Act will impact the adopted legal solutions.

Annex I- Overview of the national situation regarding the Cooperatives in some Member States

MEMBER STATE	Historic background and statistical data on the situation of the Cooperatives
AUSTRIA	In Austria there are four associations of cooperatives. The two biggest and most important are the Austrian Co-operatives Association (ÖGV Österreichischer Genossenschaftverband) and the Austrian Raiffeisen Association (Österreichischer Raiffeisenverband). These two associations have about 71.000 employees (Raiffaisen alone had 54.174 on January 1st 2007). It's difficult to say whether some cooperatives are likely to adopt the statute of an SCE. From the present point of view it's more likely that some cooperatives transform into stock corporations than into SCEs.
CYPRUS	The Cyprus Co-operative Movement is in general an important contributor to the country's policies in various sectors (for example agricultural policy). It currently employs on a permanent basis more than three thousand employees and on a temporary basis, approximately two thousand individuals every year for various seasonal jobs. This makes the cooperative movement the largest employer in Cyprus after the Public Service. The majority of registered cooperatives only employ up to 10 employees. The biggest cooperative in Cyprus at the present moment and one of the few that is likely to follow the procedure of setting up an SCE is the Limassol Cooperative Savings Bank which employs approximately 120 employees. As can be seen from this figure, cooperatives in Cyprus do not have the same scope or size that would render this transition justifiable as in other countries such as France, and Germany.
CZECH REPUBLIC	There is virtually 150 years tradition of the cooperatives. After 1990, in the frame of the Czech economic and social transformation, the cooperatives significance decreased for ideological reasons. Cooperatives were associated with communism era and its style of the socialist economy control and also with frustration of individual property rights. The cooperatives experienced large-scale transformation and lost important part of their property and members. Despite of, the cooperatives have retained important share in national economy. At present, cooperatives representatives are treated as powerful partner in the course of government negotiations. They also have their representatives in many important commissions of the Czech Government. All cooperatives associations are part of the Cooperative Association of the Czech Republic as the national cooperative centre which associates approximately 2.5 thousands cooperatives and 1.2 millions members. The cooperatives have very different property and organisational structure. Sometimes they look like join-stock company. There are most agrarian and production cooperatives in the CR. Some agrarian cooperatives were transformed in join-stock companies and theirs shareholders are also their employees. Among production and agrarian cooperatives and agrarian point-stock companies predominate successful enterprises.
DENMARK	In Denmark, cooperatives mainly exist in the agricultural sector where the participants are farmers who supply milk, which is processed into various dairy products or animals for slaughtering, and in retail trade where the participants are the customers. Arla Foods is the biggest (partly) Danish cooperative. It is owned by approximately 10.600 milk producers in Denmark and Sweden.
GERMANY	Cooperatives play a major role in Germany`s legal and economic life with approximately 12.000 cooperative societies, principally credit cooperatives, cooperatives specialised in procurement, marketing, services and production, in areas such as retail, crafts and agriculture.
GREECE	There are 713.714 members of agricultural cooperatives in Greece. The other cooperatives are of very limited importance in the field of labour relations since they usually don't employ (if any) more than 1-2 employees.
HUNGARY	Cooperatives used to be widespread in Hungary during the state-socialist regime, as following the communist takeover (1948), parallel with nationalisation of big private enterprises, small-scale businesses were forced to enter into cooperatives. In statistical terms, there were 6,532 registered cooperatives in the country at the end of 2004. This is a relatively small fraction of the total number of registered corporations and unincorporated enterprises that was 964,073 at the same time. (Hungarian Central Statistical Office)
IRELAND	The history of the Irish co-operatives movement is over 100 years old. It began with the establishment of small agricultural co-operatives in the early years of the 20th century. Agricultural co-operatives still play an important role in Irish agriculture, giving farming

MEMBER STATE	Historic background and statistical data on the situation of the Cooperatives
	communities greater control over food production, processing and the purchase of inputs. In 2006 it had grown into a €12.3 billion business (2006). With regard to industrial co-operatives, there is very little tradition in Ireland, with only a few examples of this form of co-operation many of which did not survive.
ITALY	The Italian cooperatives are active in many sectors of the national economy. For instance, the Agri-Food Cooperatives for Rural Development operating in different agri-food sectors, in rural development - production, processing, distribution, in the supply of technical services and equipment and forestry; the Worker and Production Cooperatives which operates in the manufacturing, construction, engineering and designing sectors; the Consumer Cooperatives promotes market policy choices, initiatives of the cooperative movement for the safeguard of consumers, the environment and social solidarity; the Housing Cooperatives promote the creation of building programs, allowing their members access to properties in ownership (cooperatives of individuals or shared ownership) or rented property (cooperatives of joint ownership). There are Cooperatives also in the Credit and Banking sector, in the Insurance sector and in the Chemical sector. In recent years, a continuous growth has been recorded in social cooperatives which carry out activities in providing social-assistance and health services and in integrating the disadvantaged into the work force.
LITHUANIA	According to the data provided by the Department of Statistics, the number of registered cooperatives is quite steady over last few years: from 509 in 2003 to 531 in 2007. However, only half of them was and is in operation. There are now 276 cooperative societies and one union of cooperative societies in operation. The great majority of all cooperatives (150) employs up to 10 employees. Only 9 cooperatives employ more than 50 employees, and only 7 employ more than 100 employees. According to the data of Confederation of Lithuanian Industrialists, the total number of the members in the cooperative societies does not exceed 200 000, which constitutes only 6 per cent of all population. The main sectors of economic activities of cooperatives include regional retail trade, food production and agriculture.
MALTA	The last Cooperative Directory, issued in 2000, lists 45 cooperatives. According to the secretary of the Board of Cooperatives, the present number of registered cooperatives in Malta is 58 with approximately 4,569 members. One of these is a secondary cooperative which gathers within its fold seven primary agricultural cooperatives. This cooperative which employs 30 persons, is responsible for about 26 % of the agricultural sales in the main agricultural market. Although the cooperative movement has managed to branch out in areas lying outside the agricultural sector, cooperatives are still confined to the marginal side of the economy. Most of them serve as an umbrella organisation for the vested interest of their members.
NETHERLANDS	There are no freely available figures on the total number of employees in cooperatives, or even the exact number. According to the Company register, there are at present 4179 cooperatives, but this figure includes both the cooperatives themselves and all the establishments. There are a few very large cooperatives in the Netherlands, like the RABO-bank, and in agriculture e.g. Campina, Cehave, Cosun and others. These cooperatives in many cases have established limited companies for their production activities, but the mother company is a cooperative. The employees in many cases are employed by the limited company. An example of a large mutual insurance company is Ohra.
PORTUGAL	The significance of cooperatives among the total number of Portuguese companies and to national economy has been decreasing since the 90s, after the boom that followed the Revolution in 1974. The cooperatives constituted, in 2004, only 0.4% of the Portuguese companies. They have about 2.4 million individual members and 51.000 employees. The main sectors in which the cooperatives operate are agriculture (approximately 28%), housing (approximately 18%) and services (approximately 16%). According to data from INSCOOP, the total number of Portuguese cooperatives was 3260 in 2006.
SLOVENIA	Cooperatives in Slovenia have more than 100 years of tradition and have developed in a comparable way as in other states of Central Europe. The first law in the area dates in 1873, Law on profitable and economic cooperatives (Austro-Hungarian law). The Kingdom of Yugoslavia adopted its law on cooperatives in 1937. A group of at least 10 people could establish a cooperative. The aim of cooperatives was to enhance certain activities and affairs under the principle of mutual assistance among members. Cooperative profit was distributed among the members. A new Cooperatives Act of 1992 has paved the way back to the original cooperative principles.
SPAIN	A long tradition of cooperativism exists in Spain The first Spanish law on this issue dates from July 1931. Since then, and until now, the cooperative formula has acquired a significant relevance in the economic and business fabric, becoming the main pillar of the so-called social market economy. At 31st September 2006, the total number of cooperative societies that were registered was 25,617, amounting to approximately four hundred thousand partners. At the same date, the number of employees, members and non-members, rendering

MEMBER STATE	Historic background and statistical data on the situation of the Cooperatives
	their services to different cooperative societies, was 291,643. The number of workers employed by cooperative societies is equivalent to 2.28 per cent of the working population, a percentage which rises to 4.20 per cent and 3.14 per cent in the agriculture and industry sectors, respectively.
SWEDEN	There is a lack of official statistics on the total number of cooperatives in Sweden. However most cooperatives in Sweden are established as economic associations and in 1998, Sweden had around 16 000 economic associations. Nevertheless, many of these cooperatives are not employers. The employer organisation for cooperatives KFO, has around 2 300 members which together employ around 85 000 employees. 1 200 of its members are preschools, after school recreational centres and private schools, though the cooperatives with most employees are found in the retail trade sector (KFO, 2006). Considering the nature of business of many Swedish cooperatives, there are probably only a limited number that would consider registering a European Cooperative Society.
UNITED KINGDOM	The cooperative sector in the UK is small. At a generous estimate it employs 0.6% of all UK employees.

Annex II. Cooperatives – Participation in the General meeting or section or sectoral meeting: Article 9 of the Directive 2003/72/EC[9]

On 21 August 2003, did the law of the Member State permit the statutes of a cooperative to provide for the participation of employees' representatives in the general meetings or in the section or sectorial meetings with voting rights? If yes, under which conditions?

MEMBER STATES	YES/NO	COMMENTS
Austria	No	Only members can have voting rights - Act on cooperative societies §27
Belgium	No	
Cyprus	No	Only members can participate in general meetings with voting rights.
Czech Republic	No	Only members can have voting rights Code de commerce (loi 513/1991 Col.) §226, §237-242
Denmark	YES	Statutes of a cooperative may provide for the participation of workers' representatives in the general meetings (or section or sectorial meetings) with voting rights No specific legislation on cooperatives
Estonia	No	
Germany	No	Only members can have voting rights Genossenschaftssgesetz (§43GenG). On the entry into force of the Regulation, the German cooperative societies law did not enable the employees to practice in the general meeting with the right to vote.
Greece	No	No mention on workers' participation in existing legislation- Voting rights in general meetings refer to members Law 2810/200 (agricultural cooperatives) Law 1667/1988 (urban cooperatives)
Finland	No	Employees' representatives don't have the right to participate to general meetings Act on cooperatives 1488/2001
France	No	Only members can participate to general meetings with voting rights. (In companies, right of participation of 2 members of the Works Council to General meetings with voice limited to issues requiring unanimity and without voting rights) Loi du 10 Septembre 1947 portant statut de la coopération, Code du commerce et des sociétés Code du Travail L432-6-1
Greece	No	No mention on workers' participation in existing legislation- Voting rights in general meetings are limited to the cooperatives' members, according to Law 2810/200 (agricultural cooperatives) and Law 1667/1988 (urban cooperatives)
Ireland		Draft Regulation 17 proposes to transform the Article 9 of the Directive word-for-word.
Italy	No	The Italian legislation does not mention the employees. The section or sectoral meetings regard only members or the owner of financial instruments.
Latvia	No	Existing legislation doesn't allow such possibility
Lithuania	No	No stipulation
Luxembourg	YES	Existing legislation on cooperatives doesn't prevent the statutes of a cooperative to provide for specific rules regarding the

[9] This table check and update the one contained in the WORKING PAPER No 18 of the Group of Experts on the implementation of Directive 2003/72/EC "SCE "

MEMBER STATES	YES/NO	COMMENTS
		participation of workers' representatives to the general assembly Loi modifiée du 10 août 1915 concernant les sociétés commerciales (not.art.116-117) (Loi modifiée du 6 mai 1974 instituant des comités mixtes dans les entreprises du secteur privé et organisant la représentation du personnel dans les sociétés anonymes) Therefore, it is possible to do this, but not obligatory.
Hungary	YES	Employees´ representatives may take part at the decision making forum of the cooperative (General meeting or in the section or sectoral meetings), though they have no voting rights.
Malta	No	Only Members or Delegates can participate and have voting rights according to provisions in Co-operatives Societies Act XXX of 2001
Netherlands	No	Only members have voting rights
Poland	No	Employees' representatives cannot have voting rights According to the Act of 16 September 1982, the employees may participate with voting rights if they are members simultaneously.
Portugal	No	Only members can have voting rights Lei 51/96 (Código Cooperativo), de 7 de Setembro
Slovenia	No	Only members can have voting rights Cooperatives Act, Zakon o zadrugah Ur.l . RS, št. 13/92
Slovak republic	No	Employees have voting rights *ex lege* only if they are members. The Bylaws of the respective cooperative can provide employees with such right. Commercial Code (Act No 513/1991 Coll. as amended), § 221 - 260
Spain	No	Only members can participate to general meetings and have voting rights Ley 27/1999, de 16 de Julio, de cooperativas
Sweden	No	Only members can have voting rights. Others be authorized to participate to general meetings but without voting rights.
United Kingdom	No	There is no mechanism that specifically provides for employee participation in general meetings, although there is nothing to prevent employees participating in general meetings where they are also members.

Annex III. Tables of correspondence AUSTRIA

The transposition of directive 2003/72/EC was primarily carried out by amending the Labour Constitution Act (Arbeitsverfassungsgesetz – ArbVG). The Federal Act BGBl I 104/2006 introduced a new section VII to the ArbVG providing special regulations for the involvement of employees in an SCE[10].

Article of the Directive	transposed by Labour Constitution Act (Arbeitsverfassungsgesetz – ArbVG
1.1	No implementation needed
1.2	§ 256
2	§§ 255, § 257 (1) in connection with § 212 Labour Constitution Act (ArbVG)
3	§ 257 (1) in connection with § 213; § 257 (1) in connection with §§ 215 – 228; § 257 (2) and (3) ArbVG
4	§ 257 (1) in connection with §§ 214, 226, 230 ArbVG
5	§ 257 (1) in connection with § 226 ArbVG
6	§ 254 (1) ArbVG
7	§ 257 (1) in connection with §§ 232 – 248, § 257 (4) ArbVG
8	§ 254 (2), (3) and (4), § 257 (6) ArbVG
9	§ 257 (1) in connection with § 240 ArbVG
10	§ 115 (4), § 257 (1) in connection with §§ 249 and 250 (1) ArbVG; §§ 5d, 50 (2) and 53 (1) Labour and Social Security Courts Act (ASGG)
11	§ 257 (1) in connection with § 214 ArbVG
12	§ 257 (1) in connection with § 251 (2) and § 251 (1) in connection with §§ 115 (3), 116, 120 – 122 ArbVG
13	§ 257 (1) in connection with § 229 ArbVG
14	§ 257 (1) in connection with § 253 ArbVG
15	§ 252 ArbVG
16	Austria has adopted the laws necessary to comply with this directive!
17	No implementation needed
18	No implementation needed
Annex part I	§§ 233 – 237; § 243 ArbVG
Annex part II	§§ 238 – 242 ArbVG
Annex part II al. g)	§ 251 Abs 2 ArbVG
Annex part III	§§ 244 – 248 ArbVG

[10] A few regulations transposing directive 2003/72/EC were implemented in the Labour and Social Security Courts Act (Arbeits- und Sozialgerichtsgesetz – ASGG), the Post Labour Constitution Act (Post-Betriebsverfassungsgesetz – PBVG) and the Agricultural Labour Act (Landarbeitsgesetz – LAG), partly due to the distribution of legislative competences, partly due to factual connection of regulations' contents.

BELGIUM

The social partners have concluded a Collective Agreement nr 88 in the *Conseil National de Travail* on the 30 of January 2007. The CCT nr 88 was declared generally binding afterwards by a Royal Decree of 16 March 2007.

Content – Table of correspondence	Articles in the Directive	National implementing provisions
Objective	1	Article 1 and 2 of the Collective Agreemennt
Definitions	2	Article 3 Collective Agreement
Creation of a special negotiating body	3.1	6§ 1 CA
	3.2 a	9 CA
	3.2 b	10 CA
	3.3	16 CA
	3.4	20 CA
	3.5	17CA
	3.6	18 CA
	3.7	19 CA
Content of agreement	4	22, 23, 24 , 25CA
Duration of negotiations	5	21 CA
Legislation applicable to the negotiation procedure	6	None
Standard rules	7	37 CA
	Annex part 1. a)	41 CA
	Annex part 1. b)	42CA
	Annex part 1. c)	48 CA
	Annex part 1. d)	54 CA
	Annex part 1. e)	41 CA
	Annex part 1. f)	44 CA
	Annex part 1. g)	47 CA
	Annex part 2 a)	46 CA
	Annex part 2 b)	50 and 51 CA
	Annex part 2 c)	68CA
	Annex part 2 d)	54 CA
	Annex part 2 e)	53 CA
	Annex part 2 f)	55 CA
	Annex part 2 g)	56 CA
	Annex part 2 h)	57 CA
	Annex part 3	58-64 CA
Reservation and confidentiality		None
Operation of the representative body and procedure for the information and consultation of employees	11	65 and 68 CA
Protection of employees' representatives	12	67 CA Further legislation required
Misuse of procedures	13	No transposition
Compliance with this directive	14	Articles 25 to 62 Law on Collective Agreements
Link between this Directive and other provisions	15	Article 3 ter of Collective Agreement nr 62

CYPRUS

Law 160(I)/2006, the Law supplementing the Statute for the European Cooperative Company with regard to the involvement of employees.

Content	Articles in the Directive	Sections in National legislation- Law 160(I)/2006
Objective	1	3
Definitions	2	2
Creation of a special negotiating body	3.1	5
	3.2 a	6
	3.2 b	7
	3.3,	8.1
	3.4	8.4
	3.5	8.2-8.3
	3.6	8.5-8.6
	3.7	8.7
Content of agreement	4.1-4.2	9.1-9.2
	4.3-4.4	9.3-9.4
Duration of negotiations	5	10
Legislation applicable to the negotiation procedure	6	8.1
Standard rules: 7	7	11
Standard rules: annex	Annex part 1	12
	Annex part 2	13-14
	Annex part 3	15
Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons	8	16
Participation in the general meeting or sectoral meeting	9	No equivalent section
Reservation and confidentiality	10	17
Operation of the representative body and procedure for the information and consolation of employees	11	18
Protection of employees' representatives	12	19
Misuse of procedures	13	20
Compliance with this directive	14	21
Link between this Directive and other provisions	15	4

CZECH REPUBLIC

Transposition through the Act No. 307/2006 Coll., on European Cooperative Society

Content	Articles in the Directive	Articles in National legislation
Objective	1	Irrelevant in light of transposition
Definitions	2a) 2b) 2c) 2d) 2e) 2f) 2g) 2h) 2i) 2j) 2k)	Art. 1, par. 1 Art. 39 Art. 40 Art. 41 Art. 43; 44; 45; 47; 48; 61; 62; 63; 64; 67; Art. 73, par 1 Art. 43, par. 1 Art. 37 Art. 38 Art. 38, par. 1 Art. 37
Creation of a special negotiating body	3.1 3.2 3.3 3.4 3.5 3.6 3.7	Art. 44 Art. 45-48 Art. 52 Art. 56 Art. 53, par.1,3 and 4 Art. 57; 59; 60 Art. 53, par. 2
Content of agreement	4.1 4.2 4.3 4.4 4.5	Art. 52, letter e) Art. 61 Art. 65, par. 2 Art. 64 Art. 66
Duration of negotiation	5.1 – 5.2	Art. 58
Process of negotiations	6	Art. 43, par. 2
Standard rules	7.1 7.2 7.3	Art. 67 Art. 68; 69 This optional provision was not applied
Rules applicable to SCEs established by natural persons or a single legal entity and natural persons	8.1 8.2 8.3	Art. 70 Art. 42, par 1; Art. 71 Art. 72
Participation in the general meeting or section or sectoral meeting	9	Art. 91; 92
Reservation and confidentiality	10	Art. 53, par. 4; Art. 54
Operation of the representative body and procedure for the information and consolation of employees	11	Art. 73; 86; 87; 89; 90
Protection of employees' representatives	12	Art. 55; 84; 85
Misuse of procedures	13	Art. 14; Art. 65, par. 1
Compliance with this directive	14	Art. 14; Art. 65, par. 1

Content	Articles in the Directive	Articles in National legislation
Link between this Directive and other provisions	15.1 – 15.2 15.3 15.4	Art. 57 Irrelevant in light of transposition Art. 281, par. 5/LC[11]
Standard rules	Annex 1 Annex 2 Annex 3	Art. 73-79 Art. 86-90; 97; 98 Art. 91- 98

[11] LC – Act No. 262/2006 Coll., Labour Code

DENMARK

Transposition by means of Act no 241 of 27.3.2006 on employee involvement in SCE-companies

Content	Articles in the Directive	Sections in Danish implementing Act[12]
Objective and scope	1	1
Definitions	2	2
Creation of a special negotiating body	3.1	3, 4, 5
	3.2 a	6, 7, 8
	3.2 b	9
	3.3	10, 11
	3.4	14, 15
	3.5	13 (1)
	3.6	16
	3.7	13(2)
Content of agreement	4	17, 18
Duration of negotiations	5	12
Legislation applicable to the negotiation procedure	6	1
Standard rules	7	19, 20, 32
	Annex part 1. a)	21(1)
	Annex part 1. b)	21(3) and (4)
	Annex part 1. c)	21(5)
	Annex part 1. d)	21(6)
	Annex part 1. e)	21(2) and 23
	Annex part 1. f)	22
	Annex part 1. g)	24
	Annex part 2 a)	20
	Annex part 2 b)	25
	Annex part 2 c)	26
	Annex part 2 d)	26(6)
	Annex part 2 e)	27
	Annex part 2 f)	28
	Annex part 2 g)	29
	Annex part 2 h)	30, 31
	Annex part 3 a)	32, 33(1), 34-40
	Annex part 3 b)	32, 33(2), 34-40
Rules applicable to SCE's established exclusively by natural persons or by a single legal entity and natural persons	8	1(3), 42, 43
Participation in the general meeting or section or sectorial meeting	9	17(2), 44
Reservation and confidentiality	10	45, 46
Operation of the representative body and procedure for the information and consolation of employees	11	Not transposed
Protection of employees' representatives	12	47
Misuse of procedures	13	48
Compliance with this directive	14	49, 50
Link between this Directive and other provisions	15	Not explicitly transposed

[12] Act no 241 of 27.3.2006 on employee involvement in SCE-companies.

ESTONIA

Transposition through the Act on amending the Involvement of Employees in Activities of Community-scale Undertakings, Community-scale Groups of Undertakings and European Companies on 14 February 2007 (TKS)

Directive	National law
Art 1	TKS §§ 1 2), 2 2)
Art 2 (a)	TKS § 42 (2)
Art 2 (b)	TKS § 43 (2)
Art 2 (c)	TKS § 10
Art 2 (d)	TKS § 44
Art 2 (e)	TUIS § 2 (1), AÜS § 16 (4) as the case may be
Art 2 (f)	TKS § 48
Art 2 (g)	TKS § 51 (1)
Art 2 (h)	TKS § 2 2)
Art 2 (i)	TKS §§ 3 1), 45
Art 2 (j)	TKS § 3 2)
Art 2 (k)	TKS § 46
Art 3.1	TKS § 50
Art 3.2 (a)	TKS §§ 51 (2), 52
Art 3.2 (b)	TKS § 54
Art 3.3	TKS § 56
Art 3.4	TKS §§ 55, 57
Art 3.5	TKS § 58
Art 3.6	TKS § 60
Art 3.7	TKS § 61
Art 4	TKS § 62
Art 5	TKS § 59
Art 6	TKS § 41 (1), (2)
Art 7	TKS §§ 63, 64
Art 8	TKS § 41^{1}
Art 9	No such regulation
Art 10	TKS §§ 78, 79; TUIS §§ 11, 15, 16; AÜS § 22 (3)
Art 11	TKS § 49
Art 12	TKS § 80
Art 13	TKS §§ 81, 82
Art 14	TKS §§ 77, 83-88
Art 15	TKS § 41 (3), (4)
Annex Part 1	TKS §§ 65-69^{1}
Annex Part 2	TKS §§ 70-74
Annex Part 3	TKS §§ 75, 76

FINLAND

Transposition by Law 2006/663, through amendments in the Act on Employee Involvement in European Companies (758/2004)

Content	Articles in the Directive	National implementing provisions
Title change	1	Title
Objective	1	1,2
Definitions	2	2, 3
Creation of a special negotiating body	3.1	4, 5, 6
	3.2 a	4, 5, 6
	3.2 b	7, 8
	3.3	9, 10
	3.4	11
	3.5	14, 15
	3.6	13, 15
	3.7	34
Content of agreement	4	9, 16, 17
Duration of negotiations	5	12
Legislation applicable to the negotiation procedure	6	2
Rules applicable to SCEs by natural…	8	2
Participation in the general meeting or…	9	(2)
Reservation and confidentiality	10	31, 32
Operation of the representative body and procedure for the information and consultation of employees	11	-
Protection of employees' representatives	12	33, 34, ECA Ch 7 sec. 10*
Misuse of procedures	13	36
Compliance with this directive	14	37, 38, 39
Link between this Directive and other provisions	15	35
Standard rules	7	18, 19
	Annex part 1. a)	20
	Annex part 1. b)	20, 21
	Annex part 1. c)	
	Annex part 1. d)	20
	Annex part 1. e)	20
	Annex part 1. f)	20
	Annex part 1. g)	22
	Annex part 2 a)	23
	Annex part 2 b)	24
	Annex part 2 c)	25
	Annex part 2 d)	26
	Annex part 2 e)	26
	Annex part 2 f)	26, 27
	Annex part 2 g)	27
	Annex part 2 h)	27
	Annex part 3	28, 29, 30

GERMANY

Transposition through the SCE-Beteiligungsgesetz SCEBG (Act on the participation of employees in the SCE)

Content	Articles in the Directive	Sections in National legislation (SCEBG)
Objective	1	§ 1
Definitions	2	§ 2
Creation of a special negotiating body	3.1	§ 4.1
	3.2 a	§ 5.2
	3.2 b	§ 6
	3.3	§ 5.1 and § 13.1
	3.4	§ 15.4
	3.5	§ 14
	3.6	§ 16 and § 18.1
	3.7	§ 19
Content of agreement	4.1-4.2	§ 13.1 and § 21.1-3
	4.3-4.4	§ 21.4-§ 21.5
Duration of negotiations	5	§ 20
Legislation applicable to the negotiation procedure	6	§ 3
Standard rules: 7 and annex	Annex part 1	§§ 23-26
	Annex part 2	§§ 27-33
	Annex part 3	§§ 34-38
Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons	8	§ 40 and § 41
Participation in the General Meeting or section or sectoral meeting	9	has not been implemented
Reservation and confidentiality	10	§ 43 and § 39
Operation of the representative body and procedure for the information and consulation of employees	11	§ 13.1 and § 42
Protection of employees' representatives	12	§ 44
Misuse of procedures	13	§ 45 and § 47
Compliance with this directive	14	§ 2 sub. 1 number 3 e and § 82 sub. 4 Arbeitsgerichtsgesetz (German Law for Labour Court)
Link between this Directive and other provisions	15	§ 49

HUNGARY

Transposition by the Act LXIX on the European Cooperative Society (2006).

Content	Articles in the Directive	Sections in National legislation
Objective	1	Preamble, 13, 16
Definitions	2	52
Creation of a special negotiating body	3.1	19
	3.2 a	20
	3.2 b	21
	3.3	25
	3.4	29
	3.5	31
	3.6	30
	3.7	28
Content of agreement	4.1-4.2	16, 31
	4.3-4.5	31, 32
Duration of negotiations	5	26
Legislation applicable to the negotiation procedure	6	–
Standard rules: 7 and annex	Annex part 1	34, 36-43, 48
	Annex part 2	44-47
	Annex part 3	49
Reservation and confidentiality	8	15
Operation of the representative body and procedure for the information and consolation of employees	9	32
Protection of employees' representatives	10	33
Misuse of procedures	11	16
Compliance with this directive	12	33,34
Link between this Directive and other provisions	13	1

IRELAND

Proposed Transposition into Irish Law through a Draft European Communities (European Co-operative Society) (Employee Involvement) Regulations 2007

Articles of the Directive	Draft European Communities (European Co-operative Society) (Employee Involvement) Regulations 2007
Article 1 Objective - 1 Article 1.2	It is not proposed to transpose but it is considered as implied in a range of draft Regulations Proposed to transpose by draft Regulation 3
Article 2 Definitions – 2(a); 2(b); 2(c); 2(d); 2(e); 2(f); 2(g); 2(h); 2(i); 2(j); 2(k).	Proposed to transpose all sub-sections by draft Regulation 2
Article 3 Creation of a special negotiation body	Proposed to transposed by draft Regulations 4 to 12
Article 4 Content of the agreement Article 4.1 Article 4.2 Article 4.3 Article 4.4	Propose to transpose by: Draft Regulation 18 (1) and (2) Draft Regulation 13 Draft Regulation 13 (2) Draft Regulation 13 (3)
Article 5 Duration of negotiations	Proposed to transpose by draft Regulation 14
Article 6 Legislation applicable to the negotiation procedure	It is not proposed to transpose but covered by a number of draft Regulations
Article 7 Standard rules Article 7.3	Proposed to transpose by draft Regulation 15 and draft Schedule 1 It is not proposed to transpose
Article 8 Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons	Proposed to transpose by draft Regulation 16
Article 9 Participation in the General Meeting or Section or Sectorial Meeting	Proposed to transpose by draft Regulation 17
Article 10 Reservation and confidentiality	Proposed to transpose by draft Regulation 20
Article 11 Operation of the representative body and procedure for the information and consultation of employees	Proposed to transpose by draft Regulation 18
Article 12 Protection of employees' representatives	Proposed to transpose by draft Regulation 21
Article 13 Misuse of procedures and Article 14 Compliance with this Directive	Proposed to transpose both by draft Regulations 22, 23 and Schedule 2
Article 15 Link between this Directive and other provisions	Proposed to transpose by draft Regulation 25
Article 14 Final Provisions	It is not proposed to transpose

ITALY

Transposition by means of Legislative Decree 6th February 2007, n. 48

Article of the Directive	transposed by	D. Lgs. 48/07
1 par. 1		1 par. 1
1 par. 2		1 par. 2
2 lett. a)		2 lett. a)
2 lett. b)		2 lett. b)
2 lett. c)		2 lett. c)
2 lett. d)		2 lett. d)
2 lett. e)		2 lett. e)
2 lett. f)		2 lett. f)
2 lett. g)		2 lett. g)
2 lett. h)		2 lett. h)
2 lett. i)		2 lett. i)
2 lett. j)		2 lett. l)
2 lett. k)		2 lett. m)
3 par. 1		3 par. 1
3 par. 2		3 par. 2
3 par. 2 lett.a – i)		3 par. 3 lett.a), b)
3 par. 2 lett.a – ii)		3 par. 3 lett. c), 1), 2)
3 par. 2 lett. a) cpv		3 par. 2 lett. c) 3)
3 par. 2 lett. b)		3 par. 4 and 3 par. 2
3 par. 3		3 par. 5
3 par. 4		3 par. 6, 7
3 par. 5		3 par. 8
3 par. 6		3 par. 9
3 par. 7		3 par. 10
4 par. 1		4 par. 1
4 par. 2 lett. A)		4 par. 2 lett. a)
4 par. 2 lett. B)		4 par. 2 lett. b)
4 par. 2 lett. C)		4 par. 2 lett. c)
4 par. 2 lett. D)		4 par. 2 lett. d)
4 par. 2 lett. E)		4 par. 2 lett. e)
4 par. 2 lett. f)		4 par. 2 lett. f)
4 par. 2 lett. G)		4 par. 2 lett. g)
4 par. 2 lett. H)		4 par. 2 lett. h)
4 par. 3		4 par. 3
4 par. 4		4 par. 4
4 par. 5		4 par. 5
5 par. 1		5 par. 1
5 par. 2		5 par. 2
6		6
7 par. 1 lett. a)		7 par. 1 lett. a)
7 par. 1 lett. b)		7 par. 1 lett. b), 1-2)
7 par. 2 lett. a)		7 par. 2 lett. a)
7 par. 2 lett. b)		7 par. 2 lett. b, 1-2)
7 par. 2 lett. c)		7 par. 2 lett. c, 1-2)
7 par. 2 cpv		7 par. 3
7 par. 3		Not implemented
8 par. 1		8 par. 1

Article of the Directive	transposed by	D. Lgs. 48/07
8 par. 2		8 par. 2 , lett. a), b)
8 par. 2 cpv		8 par. 3
8 par. 3		8 par. 4
9		9
10 par. 1		10 par. 1
10 par. 2		10 par. 2
10 par. 2 cpv		Not implemented
10 par. 3		Not implemented
10 par. 4		10 par. 3, 4, 5, 6, 7
11		11
12		12 par. 1, 2, 3
13		13 par. 1, 2
14 par. 1		10 par. 8, and 14 par. 1, 2, 3, 4, 5
14 par. 2		10 par. 9
15 par. 1		15 par. 1
15 par. 2		15 par. 2
15 par. 3		15 par. 3 lett. a), b)
15 par. 4		Not implemented
16		Not implementation needed
Annex standard rules part. 1		Annex part. 1, par. 1
Part 1 par. 1 lett. a)		Part 1 par. 1 lett. a)
Part 1 par. 1 lett. b)		Part 1 par. 1 lett. b) and c)
Part 1 par. 1 lett. c)		Part 1 par. 1 lett. d)
Part 1 par. 1 lett. d)		Part 1 par. 1 lett. e)
Part 1 par. 1 lett. e)		Part 1 par. 1 lett. f)
Part 1 par. 1 lett. f)		Part 1 par. 1 lett. g)
Part 1 par. 1 lett. g)		Part 1 par. 1 lett. h)
Annex standard rules part. 2		Annex part. 2
Part 2 lett. a)		Part 2 par 1 lett. a)
Part 2 lett. b)		Part 2 par 1 lett. b), c) and d)
Part 2 lett. c)		Part 2 par 1 lett. e), f) and g)
Part 2 lett. d)		Part 2 par 1 lett. h)
Part 2 lett. e)		Part 2 par 1 lett. i)
Part 2 lett. f)		Part 2 par 1 lett. l)
Part 2 lett. g)		Part 2 par 1 lett. m)
Part 2 lett. h)		Part 2 par 1 lett. n)
Annex standard rules part. 3 lett. a)		Annex part. 3 par. 1 lett. a)
Part 3 lett. b)		Part 3 par. 1 lett. b)
Part 3 lett. c)		Part. 3 lett. c)
Part 3 lett. d)		Part 3 lett. d), e)
Part 3 lett. e)		Part 3 lett. f)

LATVIA

Transposition by means of the Law on the involvement of employees in the European Cooperative Society (November 2006)

Content	Articles in the Directive	The Law
Objective	1	Art.2
Definitions	2	Art.1, 4 (1), 14 (2)
	3.1	Art. 3
	3.2 a	Art. 4 and 5
	3.2 b	Art. 6
	3.3	Art. 7
	3.4	Art. 8 and 9
	3.5	Art.10
	3.6	Art. 11 and 12
	3.7	Art.13
Content of agreement	4	Art.14
Duration of negotiations	5	Art. 15
Legislation applicable to the negotiation procedure	6	Art. 16
Standard rules	7	Art. 17 and 18
SCS established by natural persons	8	Art. 21
Participation in the General Meeting	9	Art. 22
Reservation and confidentiality	10	Art. 24
Operation of the representative body and procedure for the information	11	Art. 19 (10)
Protection of employees' representatives	12	Art. 25
Misuse of procedures	13	No provisions
Compliance with this directive	14	Art. 26
Link between this Directive and other provisions	15	No provisions
Annex	Part 1	Art.19
	Part 2	Art. 20
	Part3	Art. 23

LITHUANIA

Transposition by means of Law no X-935 on Employees Involvement in Decision-Making in European Cooperative Societies

Content	Articles in the Directive	Sections in Law no X-935
Objective	1.1	-
	1.2	4.1
Definitions	2	3
Creation of a special negotiating body	3.1	9
	3.2 a	10
	3.2 b	11
	3.3	19 (1)
	3.4	12(2) – 12 (4)
	3.5	14 (4)
	3.6	15
	3.7	14 (1)
Content of agreement	4.1-4.2	6 (1), 19(2)
	4.3-4.4	19 (5), 19 (4)
Duration of negotiations	5	17
Legislation applicable to the negotiation procedure	6	2 (1)
Standard rules: 7 and annex	Annex part 1	23, 24, 25, 26, 27, 28, 29, 30
	Annex part 2	31, 32
	Annex part 3	33
Rules applicable to ECS established by natural persons or by a single legal entity and natural persons	8	9 (2)
Participation in general meeting or sectoral meeting	9	20, 21
Reservation and confidentiality	10	7, Section 47 Labour Code
Operation of the representative body and procedure for the information and consolation of employees	11	6 (1), (also Article 40 of the Labour Code)
Protection of employees' representatives	12	8, (also Article 134 of the Labour Code)
Misuse of procedures	13	6 (4)
Compliance with this directive	14	34 (also Article 41-9Code of Administrative Penalties)
Link between this Directive and other provisions	13	-

MALTA

Transposition by means of Employee Involvement (European Cooperative Society) Regulations 2007.

Description	Article of Directive	Section of Regulations
Definitions	2	2
Creation of a SNB	3	4
Election of members of the SNB and conduct of ballot	3	5,6
Decisions of the SNB	3	7,8
Content of the employee involvement agreement	4,5	9
Legislation applicable	6	10
Standard rules	7	11
SCEs established exclusively by natural persons or by a single legal entity & natural persons	8	12
Participation in GM or section or sectoral meeting	9	13
Confidentiality	10	14
Procedure for inf & cons	11	15
Protection of employees representatives	12	16
Misuse of procedures	13	17,18
Compliance and enforcement	14	20
Link with other directives	15	19

THE NETHERLANDS

The transposition of the SCE directive has been implemented in the transposition law of the European company (SEBG)

Content	Articles in the Directive	National implementing provisions
Objective	1.1	Needs no implementation
	1.2	Chapter 2
Definitions	2. a, b, d, g, h, i (1st part), j (1st part),k	2:1
	2. c in conjunction with art. 3.2-7 Directive 94/45/EC	2:1.1; 2:2
	2. c in conjunction with art. 3.6 (2nd par.) Directive 94/45/EC	Not implemented (Directive is not applicable to legal entities not subjected to the law of a member state) art. 2. SCE-Statute)
	2. e	2:3.1-2
	2. f	2:3.3-4
	2. i (2nd part), j (2nd part)	2:28.1-2
Creation of a special negotiating body	3.1, 3.2 (intro)	2:4.8-9; 2:9; 2:10.7-8; 2:12.1 (2nd sentence); 2:13.1
	3.2 a i	2:10.1
	3.2 a ii	2:10.2-5
	3.2 b	2 :10; 2:11; 2:41
	3.3	2:12; 2:13.1
	3.4	2:15.1-4
	3.5	2:17.1-2
	3.6 (1st par.)	2:14
	3.6 (1st par. last sentence)	2:14.2; 2:22
	3.6 (2nd par.)	2:15.5
	3.6 (3rd par.)	2:15.6
	3.6 (4th par)	2:16
	3.7	2:17.3
Content of the agreement	4.1	Needs no implementation (contract law is subject to good faith, reasonableness and fairness)
	4.2	2:19.1,3-4
	4.3	2:19.6
	4.4	2:19.4
	4.5	2:19.2
Duration of negotiations	5	2:18
Legislation applicable tot the negotiation procedure	6	2:8
Standard rules	7.1 (1st` par.)	Chapter 2, Section 3
	7.1 (2nd par. and part a, b)	2:22

Content	Articles in the Directive	National implementing provisions
	7.2 a	2:23
	7.2 b	2:23.2
	7.2 c	2:23.3
	7.2 (4th par.)	2:23.4-5
	7.3	Needs no implementation (not used the option to *not* implement art. 7.2 b) SCE-Directive)
Rules applicable to SCE's established exclusively by natural persons or by a single legal entity and natural persons	8.1	2:7.2: 2:21.2
	8.2 (1st par., intro)	2:36
	8.2 (1st dash)	2:37.1
	8.2 (2nd dash)	2:37.2
	8.2 (2nd par.)	2:37.3
	8.3	2:38
Participation in the general meeting or section or sectorial meeting	9	2:40
Reservation and confidentiality	10.1	2:4.4-6
	10.2	2:13.2; 2:28.3
	10.3	Needs no implementation
	10.4	2:5
Operation of the representative body and procedure for the information and consultation of employers	11	Needs no implementation
Protection of employees' representatives	12 (1st par.)	3 :1
	12 (2nd par.)	2 :4.1-3
Misuse of procedures	13	2 :19.1 j, k ; 2 :20
Compliance with directive	14	2 :5 (civil enforcement)
Link between directive and other provisions	15.1	2:6.1
	15.2	2 :6.2
	15.3	2 :6.3
	15.4	2 :6
Final provisions	16.1	II
	16.2	Preamble ; 2 :1.1 (definition directive)
Review by the commission	17	Needs no implementation
Entry into force	18	Needs no implementation
Standard rules: Composition of the body representative of the employees	Annex part 1. intro	2 :24.1
	Annex part 1. a, b (1st par.)	2 :24.2-4 ; 2 :41
	Annex part 1 b (2nd par.)	2 :25.1 in conjunctino with 2 :10.1
	Annex part 1. c	2 :26.2
	Annex part 1. d	2 :26.3
	Annex part 1. e	2 :25 in conjunction with 2:10.1
	Annex part 1. f	2 :25.2
	Annex part 1. g	2 :27
Standard rules : Standard rules for information and consultation	Annex part 2. a	2 :28.4 (1st sentence)
	Annex part 2. b	2 :29
	Annex part 2. c	2 :30
	Annex part 2. d, e	2 :31

Content	Articles in the Directive	National implementing provisions
	Annex part 2. f, h	2 :32
	Annex part 2. g	2 :4.3
Standard rules : Standard rules for participation	Annex part 3. a, b, c	2 :33
	Annex part 3. d	2 :34
	Annex part 3. e	2 :35

POLAND

Poland implemented the directive principally by the Act of 22 July 2006 on the European Cooperative Society (SCE)

Article of the Directive	transposed by the Act on the ECS, article
1	35
2	2 point 3 and 8; 34
3	36 - 57
4	58; 59
5	53
6	No implementation needed
7	60 - 62
8	88 - 91
9	58§2
10	92 - 95
11	54
12	96 - 99
13	100 – 101; 111
15	57§6
Annex part I	63 – 71
Annex part II	72 - 82
Annex part III	83 - 87

PORTUGAL

Transposition of the ECS-Directive still in process: bill of Decree-Law

Article of the Directive	to be transposed by Decree-Law
1.1	No implementation needed
1.2	Art. 2.1
2	Art. 4
3	Arts. 6; 7; 8; 11; 12; 13; 15; 16.3; 20(1); 39(1), (3), (5) and (6); 38; 41; 42
3(4) last paragraph	Art. 4.j)
4	Arts. 13; 16; 17; 18; 20(1)
5	Art. 14
6	Art. 5
7	Art. 20
8	Arts. 33; 34; 35
9	No reference
10	Art. 37 by reference to arts. 458 to 460 of the Labour Code
10(4)	No
11	Art. 36
12	Art. 47 and also arts. 454 to 457 of the Labour Code
13	No reference
14(1)	Art. 5.2
14(2)	No reference
15(1)	Art. 3
15(2), (3) and (4)	No reference
16	No
17	No implementation needed
18	No implementation needed
Annex part I	Arts. 21; 22; 23(1) and (2); 39(2), (3), (7) and (8); 41; 43
Annex part II	Arts. 24; 25; 26; 27; 28; 23(3), (4) and (5); 38(2) to (9)
Annex part II al. g)	No reference
Annex part III	Arts. 29 ; 30; 31; 32

SLOVAKIA

Transposition through the Act no. 91/2007 Coll., on European Cooperative Society

Art. of the Directive	Art. of Slovak law: Act no. 91/2007 Coll
1	27 of Act on the SCE
2a	1 (1) of Act on the SCE
2b	28 (2) of Act on the SCE
2c	28 (3) of Act on the SCE
2d	29 (1) of Act on the SCE
2e	11a of the Labour Code
2f	28 (4) of Act on the SCE
2g	28 (5) of Act on the SCE
2h	28 (1) of Act on the SCE
2i	28 (6) of Act on the SCE
2j	28 (7) of Act on the SCE
2k	28 (8) of Act on the SCE
3 (1)	29 (2) of Act on the SCE
3 (2) (a) (i)	29 (1) and 30 (1) of Act on the SCE
3 (2) (a) (ii)	30 (3,4) of Act on the SCE
3 (2) (b)	30 (2, 5 - 11) of Act on the SCE
3 (3)	31 (1) of Act on the SCE
3 (4)	32 (1,2) of Act on the SCE
3 (5)	31 (2,4) of Act on the SCE
3 (6)	33 (1,2,3) of Act on the SCE
3 (7)	31 (2,3) of Act on the SCE
4 (1)	31 (1) of Act on the SCE
4 (2)	34 of Act on the SCE
5	35 (1) of Act on the SCE
6	27 of the Act on SCE
7	35 of the Act on SCE
8	36 of the Act on SCE
9	not transposed
10	34 (2) and 47 of the Act on SCE
11	28 (6), 28 (7) and 31 (1) of the Act on SCE
12	48 and 34 (2) of the Act on SCE
13	27 of the Act on SCE and also simple fact of the Directive transposition
14	simple fact of the Directive transposition into national law by generally valid and binding act (after the Act on SCE shall be passed by the Slovak parliament) Act no. 125/2006 Coll. on Labour Inspection Clause 9 of the Labour Code
15	33 (1) of Act on SCE
16	49 and Annex of Act on SCE
17 - 19	N/A
Part 1 (a) of the Annex	38 (1) Act on SCE
Part 1 (b)	Articles 37 (4) and 38 (2) of Act on SCE
Part 1 (c)	40 (2) of Act on SCE
Part 1 (d)	40 (1) of Act on SCE
Part 1 (e)	38 (3) of Act on SCE
Part 1 (f)	38 (5) of Act on SCE
Part 1 (g	41 (2,3) of Act on SCE
Part 2 (a)	Article 41 (1) of Act on SCE
Part 2 (b)	43 (1,2) and 44 (1) Act on SCE

Art. of the Directive	Art. of Slovak law: Act no. 91/2007 Coll
Part 2 (c)	43 (3) and 44 (2,3,4) of Act on SCE
Part 2 (d)	42 (2) of Act on SCE
Part 2 (e)	43 (4) of Act on SCE
Part 2 (f)	42 (2) second sentence of Act on SCE
Part 2 (g)	42 (1) of Act on SCE
Part 2 (h)	42 (3) and 42 (2) last sentence of of Act on SCE
Part 3 (a)	46 (1) of Act on SCE
Part 3 (b)	46 (2) of Act on SCE
Part 3 (c)	46 (2) second sentence of Act on SCE
Part 3 (d)	46 (3,4) Act on SCE
Part 3 (e)	46 (5) of Act on SCE

SLOVENIA

Transposition by the Participation of Workers in Management of the European Cooperative Act (SCE)

Content	Articles in the Directive	National implementing provisions
Objective	1	1
Definitions	2	3
Creation of a special negotiating body	3.1	4 (1,2)
	3(2)	4(3)
	3(2) (a) (i)	5
	3 (2) (a) (ii)	6
	3(2) b	8
	3(3)	9 (1,2), 16(1)
	3(4)	12 (1,2), 13(1,2)
	3(5)	10
	3(6)	14
	3(7)	11
Content of agreement	4	9(2), 16, 17
Duration of negotiations	5	9 (3,4)
Legislation applicable to the negotiation procedure	6	15
Standard rules	7	18, 30, 13(4,5)
	Annex part 1. a)	19 (1), 20(1)
	Annex part 1. b)	21 (1,2), 22
	Annex part 1. c)	21(3)
	Annex part 1. d)	21(4)
	Annex part 1. e)	20(2)
	Annex part 1. f)	21(5)
	Annex part 1. g)	23
	Annex part 2 a)	24-29
	Annex part 2 a)	19 (2)
	Annex part 2 b)	24
	Annex part 2 c)	25
	Annex part 2 d)	20 (3,4)
	Annex part 2 e)	26
	Annex part 2 f)	27
	Annex part 2 g)	28
	Annex part 2 h)	29
	Annex part 3	30-34
Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons	8	35, 36
Participation in the general meeting or section or sectorial meeting	9	37, 38
Reservation and confidentiality	10	40
Operation of the representative body and procedure for the information and consolation of employees	11	39
Protection of employees' representatives	12	41
Misuse of procedures	13	43
Compliance with this directive	14	not transposed
Link between this Directive and other provisions	15	not transposed

SPAIN

Transposition by means of Law 31/2006, of 18th October, regarding the involvement of employees in European companies and cooperatives

Content	Articles in the Directive	National implementing provisions
Objective	1	1
Definitions	2	2
Creation of a special negotiating body	3.1	4;5
	3.2 a	7
	3.2 b	14.2 ; 14.3
	3.3	8.1
	3.4	9.1;9.2
	3.5	9.5; 9.6
	3.6	8.2;8.3
	3.7	9.6
Content of agreement	4	8.1;11.1;11.2; 11.3
Duration of negotiations	5	10.1
Legislation applicable to the negotiation procedure	6	3.1
Standard rules	7	14
	Annex part 1. a)	15.1; 15.2
	Annex part 1. b)	16.1; 19
	Annex part 1. c)	18.2
	Annex part 1. d)	17.4
	Annex part 1. e)	16.2
	Annex part 1. f)	16.3
	Annex part 1. g)	15.3; 15.4
	Annex part 2 a)	17.1
	Annex part 2 b)	17.2
	Annex part 2 c)	17.3
	Annex part 2 d)	17.4; 18.3
	Annex part 2 e)	18.7
	Annex part 2 f)	18.4
	Annex part 2 g)	18.5
	Annex part 2 h)	18.6
	Annex part 3 a)	20.1
	Annex part 3 b)	20.2; 20.4; 20.5
Reservation and confidentiality	10	22; 36.4
Operation of the representative body and procedure for the information and consolation of employees	11	25
Protection of employees' representatives	12	23
Misuse of procedures	13	20.3; 26
Compliance with this directive	14	2.12; 3.5; 10 bis[13]; 33-38
Link between this Directive and other provisions	15	Add. Prov. 1.1-1.4
Right to involvement applicable in SCES established exclusively by natural persons or by a single legal entity and natural persons	8	Add. Final. Second.2

[13] LISOS: Ley de infracciones y sanciones del orden social. Law on the social infringements and sanctions.

SWEDEN

Tranposition through the Act 2006:477 on employee involvement in European Cooperative Companies (June 2006), Acts 2006:478 and 2006:479 modifying EWC and board-level participation Acts

Content	Articles in the Directive	Sections in National legislation SFS 2004:559
Objective	1	No equivalent section
Definitions	2	5
Creation of a special negotiating body	3.1	6
	3.2 a	8-9
	3.2 b	7, 11-15
	3.3	22
	3.4	24-25
	3.5	23
	3.6	21, 26
	3.7	27
Content of agreement	4.1-4.2	28-30
	4.3-4.4	31
Duration of negotiations	5	20
Legislation applicable to the negotiation procedure	6	4
Standard rules: 7 and annex	Annex part 1	36-44 and 53
	Annex part 2	45-52, 54
	Annex part 3	55-63
Reservation and confidentiality	8	3, 66
Operation of the representative body and procedure for the information and consolation of employees	9	No equivalent section
Protection of employees' representatives	10	65
Misuse of procedures	11	67
Compliance with this directive	12	68-70
Link between this Directive and other provisions	13	

UNITED KINGDOM

Statutory Instrument 2006 No. 2059 The European Cooperative Society (Involvement of Employees) Regulations 2006

Content	Articles in the Directive	Regulations Statutory Instrument 2006 No. 2059
Objective	1	No equivalent section – objective stated in Explanatory Note; Arrangements to apply to all SCEs covered by regulation 4
Definitions	2	3
Creation of a special negotiating body	3.1	7
	3.2 a	10
	3.2 b	12-15
	3.3	9 and 17 (1)
	3.4	18 (1-3)
	3.5	18 (5)
	3.6	19
	3.7	18 (6)
Content of agreement	4.1-4.2	16 (1-2), 17 (2)
	4.3-4.4	17 (3) and 17 (4)
Duration of negotiations	5	16 (3)
Legislation applicable to the negotiation procedure	6	4
Standard rules	7	21 (1-4)
Annex	Annex part 1	Schedule 2 Part 1
	Annex part 2	Schedule 2 Part 2
	Annex part 3	Schedule 2 Part 3
SCEs established by natural persons	8	5, 6 and Schedule 1
Participation in general meetings or section or sectoral meetings	9	17 (2 (h)) and 21 (5)
Reservation and confidentiality	10	26 and 27
Operation of the representative body and procedure for the information and consultation of employees	11	Not transposed
Protection of employees' representatives	12	28-35
Misuse of procedures	13	24
Compliance with this directive	14	8 (1), 11 (1), 12 (4), 14 (6), 20 (1), 24 (1) 26 (6), 27 (2) and in Schedule 1 2. (1), Schedule 1 5. (1), Schedule 1 6. (4), Schedule 1 8. (6), Schedule 1 14. (1) and 36 to 41, plus 22 and 23. (In addition, remedies available to individuals who have not benefited from the appropriate protections are provide in regulations 30, 32 and 34)
Link between this Directive and other provisions	15	42 and 43