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Societas Europea – The new European Company

The one fits all Model, facilitating European Trade?

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ABSTRACT:

The purpose of the thesis was to investigate the new European corporate model, the so called Societas Europaea (SE). The objective of this work was to answer whether the new corporate system can fulfil its purpose to facilitate trade within Europe and whether the European Commission was able to create one uniform, supranational model that serves the needs of all European member states.

Mainly secondary research was applied, using books, journals and other publications. However, it was also aimed to conduct qualitative research in form of questionnaires to identify experience of firm that have established a European Company. Unfortunately, no replies were received and therefore, press releases and existing case studies were used.

The results of the study revealed numerous advantages and disadvantages of the European Company. Major benefits are the creation of a European mindset and harmonisation of business operations, as well as unlimited ability to move the domicile of the company and cost saving through lower administrative burdens. Deficits are in regard to the lack of unification of the regulation, resulting in a different implementation in each member state, as well as the reference to national laws for certain legal matters, such as taxation. Findings also indicated that worker involvement is a highly problematic issue, and appears to be reason why the SE is accepted and dispersed so unequal in the European countries.

To this end, findings proved that basic ideas of the SE offer good grounds for business activities and facilitate trade within the European Union and therefore a respectable number of firms have chosen to adopt this corporate structure. On the other hand, there is still strong need for improvement to make this corporate form more attractive in all member states and to further harmonise the statute.

Keywords, Societas Europaea, SE, European Company, corporate model, regulation

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GLOSSARY OF TERMS

AG	Abbreviation for Aktiengesellschaft; equivalent to the British public limited company
Co- determination	Right of employees to have a role or influence in managerial decisions; originated in Germany
Council Directive	Supplementing legislation of the European Company regulating the involvement of employees
Council Regulation	Statute for the European Company
Betriebsrat	German Works Council
EEA	Abbreviation for European Economic Area; a trade agreement between all member states of the EU and the countries of Lichtenstein, Norway and Iceland
EFTA	Abbreviation for European Free Trade Association; an alternative trade area for European states that do not want to join the EU, member countries are Lichtenstein, Norway, Iceland and Switzerland
EMF	Abbreviation for European Metalworkers' Federation; the representative body defending the interests of workers in the European metal industry
ETUI	Abbreviation for European Trade Union Institute
HST	Abbreviation for Home State Taxation; taxation is paid according to the regulations of the country of domicile or main registration
One- tier System	A corporate management form where management and control are exercised by one organ
SE	Abbreviation for Societas Europaea; the new European corporate system
SEAG	Abbreviation for the German national law implementing the statute of the Societas Europaea
SEBG	Abbreviation for the German national law implementing the provision of worker involvement
SNB	Abbreviation for Special Negotiating Body; special body established during the formation process of a European Company which consists of employee representatives of the participating companies

Supranational	Formations or agreements between various countries that are superior to national regulations
Transnational	An organisation operating in various countries, but is not subject to national structures
Two- tier System	A corporate management form where management and supervision are exercised by two different organs.
VAT	Abbreviation for Value Added Tax
Works Council	Corporate body representing workers
Worker Involvement	Right of employees to have to be involved certain decision making processes

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1 INTRODUCTION

A new corporate system was created to unify companies within all member states of the European Union and its form shall serve the requirements of all countries that belong to the European Union. However, such a uniform structure appears to be rather revolutionary and it is to question whether such a structure is in fact a realistic model and possible to put it into practice. This study will discuss the attempt to answer this question and shall help the reader to develop a personal view about the helpfulness and relevance of the new European company.

The main objective of this thesis paper will concentrate on defining the utility of the *Societas Europaea* as a new corporate form and whether it will really facilitate the activities of companies operating within the European Union, as promised and promoted by the European Commission. Therefore the main research question is whether the new European statute is a model that will suit all member countries and whether it will offer better conditions for European trade. Another aim is to compare member states of the European Union in regard to acceptance of the new corporate form, traditional structures, innovations that the *Societas Europaea* offers, and whether it is possible to introduce a single corporate form for all EU member states. Although the European Union is looked at as a whole including all member states, the dissertation paper will mainly concentrate on giving examples of two member states, namely Germany and the United Kingdom. This is necessary to limit the scope of the research. These two countries will serve for a comparative analysis of how the European Company Statute is implemented and practices in different European countries.

The research work will look at different aspects of the new European corporate form, the so called *Societas Europaea*. It comprises the background and long development process of the European Company, since the history forms the basis for the statute of the *Societas Europaea* and helps to understand the present construction. Furthermore, the current situation and progresses are looked at with special emphasis on comparing the acceptance and popularity of the European Company within the various EU member states. Additionally, the research will also refer to relevant legislative papers and a short introduction of these, as well as a short overview on the formation of the European Company. All these aspects are covered under chapter 2.

Another important component will be the specification and argumentation of advantages of the European Company, as well as its disadvantages that need to be taken into consideration. The analysis of advantages and disadvantages forms a basis to answer the research question and is presented in chapter 3 of the research work. Both benefits and deficits are weighed up and contrasted in order to provide suggestions on the usefulness of the European statute.

During the subsequent chapter 4 cases studies of firms that have established a Societas Europaea are introduced and analysed. A selection of three cases is presented, including the German commercial vehicle producer MAN, the scepticism of British companies and the opportunities that the European Company also offers to non- European businesses.

Finally, the findings of the research are further analysed and interrelated in the conclusion, namely chapter 5.

Regarding the sources of this study, it strongly concentrates on a wide range of secondary literature that discusses the topic from various angles and originates from different sources. Books, journals and law texts have been one source of data. However, since the research topic is still rather recent, only a limited quantity of printed material is available. Therefore, the study also comprises numerous internet articles, data presented on web pages of the European Union, cases studies conducted by the European Union, as well as press releases and annual statements of companies that are actively involved in the issue. The published information by companies and case studies has been especially useful and offers practical experience. The original plan was to also gather some primary data from companies that have or are planning to adopt the status of the Societas Europaea. Unfortunately, it became apparent in the research process that willingness to cooperate and to share information on this issue has been very low. Therefore, the research is mainly restricted to secondary data.

2 BACKGROUND INFORMATION

2.1 CORPORATE FORMS IN EUROPE

The way a company is managed and governed plays a significant role in business. Therefore, also the choice of the corporate system to adopt is of importance. It is assumed that the corporate structures of countries, as we know them today, have partly evolved from the early economic activities and from how the economy of a country started.¹ However, according to Paul Frentrop the term itself only emerged during the late 1970s.² Today, various systems exist which can be divided into two main categories, namely the Anglo- American form and the Continental European form. Both systems can be found within Europe and feature various contrasts. The United Kingdom, following the Anglo- American corporate system, and Germany, following the Continental European system are the two countries within Europe that probably represent the strongest contrast and feature most dissimilarities.

The traditional German corporate structure started to develop towards the end of the 19th century with Bismarck's reforms to stimulate the German economy. Large banks were formed and tight to long term- investments. During the 1950s co- determination law was introduced based on earlier regulations in the steel and iron industries and has remained until today.³ Furthermore, German law requires firms to adopt a two- tier management system. That means that next to the board of directors a supervisory board needs to be formed that will oversee management. Developments of corporate practices go even further back in the past in the United Kingdom. Traditionally, a one- tier system is used, meaning that managing and supervising is carried out by the same body.⁴ Farrar (2005) states that whereas British "...treat the corporation as a separate legal person...", Germans consider "the corporation as a social institution that accommodates the interest of employees..." (page 21). Therefore, a significant difference concerning employee involvement can be identified when comparing both corporate systems. Whereas involvement of workers does not play any role in the Anglo- American model, German regulations are traditionally very strict in regard to this issue and allow a relative high

¹ Farrar (2005), page 462

² Frentrop (2002), page 7

³ Farrar (2005), page 465/ 466

⁴ Frentrop (2002), page 3037 304

proportion of participation. Generally it is to mention that the worker participation depends on the number of employees in Germany. However, in a company with over 2000 workers, half of the supervisory members represent employees.

Due to the different European corporate systems, it appears obvious that creating one single corporate system that would satisfy all European demands must be rather difficult, if even impossible. Nevertheless, with the introduction of the new European company, the *Societas Europaea*, a combination was formed that shall serve as a single model.

2.2 THE CORPORATE FORM OF THE SOCIETAS

The Latin name of the new European corporate form is “*Societas Europaea*” and forms the official abbreviation of “SE”. A translation of the Latin term would be close to “European Company” which is a regular used term in English literature to describe the SE and is also used throughout this research work. Further defining the European company (SE), it is a public limited-liability company which is governed by community law and which is exercisable and possible to register in all EU member states.

2.2.1 Legislations

Statutory source of the *Societas Europaea* is the Council Regulation (EC) No 2157/ 2001 of 8 October 2001 on the Statute for a European Company (EC) issued by the European Commission. The Council Regulation covers aspects such as formation, managerial structure, annual accounts, liquidation and other general provisions. Additionally, the Regulation is accompanied by a second paper, the Council Directive 2001/86/EC of 8 October 2001. The Council directive complements the Council Regulation and regulates employee involvement. Both legal papers entered into force on 8 October 2004 and henceforward constituted ground for the formation of *Societas Europaea*. The statute of the SE is applicable for the whole EEA (European Economic Area), including all member

states of the European Union, as well as the member countries of EFTA (European Free Trade Association), i.e. Norway, Iceland and Lichtenstein.⁵

In order to enable the statute to be applicable, each of the member states had to compose a national legislation for implementation of the SE regulations. Therefore, each country that allows for the establishment of a European Company adjusted their national legislation. In the cases of Germany and the United Kingdom national implementation law is as follows: Germany has issued two provisions, the SEAG which implements the Council Regulation and the SEBG which controls the worker involvement. The United Kingdom has developed only one paper, the European Public Limited Liability Company Regulations 2004 which controls both, the Regulation and the Directive.⁶

2.2.2 Formation of an SE and requirements

The formation of a Societas Europaea sets various pre- conditions that must be complied with. First of all, at least two of the participating parties must have a registered office within a European member state or in a member state of the EFTA. Furthermore, a minimum share capital of €120,000 is required.⁷ Additionally, a SE cannot be found through a start- up of a total new company, which is usually possible for a limited company. Therefore, the SE can only be formed via reorganisation or conversion using one of five provided alternatives or types of establishment. The list stated below gives an overview of these five alternatives.

- 1 – Creation of a European Company via a merger of a minimum two existing public companies of which at least two need to be registered in different member states
- 2 – Creation of a Societas Europaea via the formation of a SE holding company by two companies. Participating companies need to be registered as public or private limited companies and must have a subsidiary in another EU member state which exists for at least two years.

⁵ Gerven and Storm (2004), page 26 - 28

⁶ Gerven and Storm (2004), page 548 and 550

⁷ Blanke (2005), online article

- 3 – Creation of a Societas Europaea by forming a combined subsidiary of companies by two companies. This subsidiary must be registered in another EU member state and must have existed for at least two years. Participating companies need to be registered as public or private limited companies and must have a subsidiary in
- 4 – Creation of a European Company by converting a public limited company into a SE. The public limited company must have a subsidiary in another EU country which has been operating for at least two years.
- 5 – Creating a Societas Europaea via the establishment of a SE subsidiary. The originating companies must be a SE.

2.3 DEVELOPMENT OF THE SOCIETAS EUROPAEA

2.3.1 History

The first Ideas and efforts towards closer cooperation between European countries and the formation of European transnational companies can be traced back to the first half of the 20th century. Examples are the Bank for International Settlements (BIS) that had been signed by 7 countries in 1930, including Germany and the United Kingdom, and the European Company for the Financing of Railroad Stock (EUROFIRMA) which was founded during the 1950s after World War II and is still existing today.

The first proposal for a European Company was pronounced in June 1959 by the French notary Thibièrge. Almost simultaneously during October of the same year, Professor Sanders from the Netherlands presented a detailed draft paper for the European company. The suggestions of Sanders and Thibièrge were similar, and the main tenor was to create a tool with which companies would be able to overcome trade barriers within Europe, and to support economic integration of the European market. Besides the strengthening of the European market, Sanders also saw an advantage for overseas firms that plan to establish an affiliate company in Europe. In order to overcome national legal boundaries, a supranational legislation would guide the statute without any linkages to national law.

Intensive debate on the issue followed, but voices remained sceptical and it seemed as if Sanders and Thibièrege were ahead of the times. However, in 1966 the European Commission assigned Sanders with the task to form a group of experts and to work on a draft of the European Company Statute. The draft was already finalised at the end of the same year, and it was mainly based on German national law. Further research groups were formed under direction of Sanders which for example looked at problems and benefits, form and foundation of a European Company. Already at this time, the main principals of foundation were defined which remained the same until today. These principles included for example the decision that a European Company can only be established through already existing businesses.

The next milestone along the difficult path of the European Company Statute was an extensively elaborated proposal by the European Commission which was presented to the Council in 1970. It comprised 284 articles and was primarily based on Sanders paper from 1966. Content of this proposal were again rules on the foundation of the European Company and restrictions to it, but also corporation law, corporate governance, establishment and employee involvement. The statute represented an independent, supranational legislation that would be placed over any national law. After a revision of several points of the paper, such as aspects about employee involvement and organisational structure, it was submitted again to the Council in 1975. However, it was impossible at that time to reach a conjoint agreement by all member states. Most of the countries, like the UK that had just joined the European Union in 1973, were not willing or prepared to accept certain points of the proposal. The draft paper was mainly leaning on the German corporate system, and therefore certain practices, such as worker participation or the dualistic management structure were unknown to other countries. Due to the inability of reaching a consensus, the efforts on the European Company Statute were suspended in 1982.

Nevertheless, three years later the efforts on the Statute were revived. According to the White Paper, published in the mid 1980's, the Single European Market should be accomplished until 1992. As the creation of a unified company model is also part of reaching the goal of a common market, the European Commission requested to act fast and submitted a new proposal in July 1989. In order to overcome the disagreements and to develop a successful legislation that would be accepted by all member states, the Commission decided to add more flexibility and simplification. Therefore, the number of articles was drastically reduced, simply eliminating all unsolved issues and leaving them to

national law. As a result the European Company Statute was no longer of supranational nature, but rather “European Companies with national shapes”⁸. Furthermore, from this time on the legislation of the European Company was divided into two parts, one being the drafted Regulation for the Statute of the European Company and the second being the Directive on the worker participation. In May 1991 a revised version of the proposal from 1989 was submitted by the European Commission, including both the Regulation and Directive. The policy of rather leaning on national than on an independent supranational law was continued, and even further developed. As a consequence of this, social, taxation, insolvency and property right issues were falling under national regulation of each member state. Additionally, a choice of three different models of employee involvement was added to the directive which should allow companies to opt for the most preferable alternative. Unfortunately, similar to earlier efforts the proposal was again rejected due to unsolvable discrepancy between member states. The issue of worker participation remained especially highly delicate. Whereas certain countries do not possess any involvement of employee, such as Spain or the UK, Germany feared that traditional companies operating under national corporate law would dramatically lose their competitiveness and attractiveness.

Despite all the impossibilities and long lasting negotiations, the European Council passed the Regulation on the European Company in October 2001. The directive was still revised and adapted in a long and difficult process between 1993 and 1997 when the final report of the “European Systems of Worker Involvement”⁹ was given to the Commission. Together with the regulation in 2001, also the Directive on the European Company was passed. However, in practice the new European corporate form only became effective in 2004, three years after the release of the legislation. The reason for this was a deadline of three years in which the rules needed to be converted and adapted to national law. A national implementation law had to be developed by each member state which became necessary due to the room for voting rights and reference to national regulations.

Summarising the development of the European Company Statute, the path from its birth until the final implementation was long and difficult. Certain ideas remained throughout the development of the statute, but other major issues were strongly changed, or even reversed. During the first planning stages of the 60s and also later during the 70s, the statute was strongly based on German national law, such as the regulation on employee

⁸ As stated by Mr Carsten Lange in his book “Grenzüberschreitende Umstrukturierung einer Europäischen Aktiengesellschaft“ on page 50

⁹ Group of experts, Final Report, May 1997

involvement. Even more significant is the fact that the regulation was very detailed and in-depth during this period. In fact, the proposals of the 60s and 70s were structured in such a way that the European Company Statute would have been of supranational nature. This would have positioned the statute above any national law. However, these initial ideas caused a lot of discrepancy amongst the member states. It simply seemed that the regulation was too revolutionary and ahead of time. Yet on the other hand, it could be also argued that the Statute of the European Company is still too revolutionary today. Since the 1980s the regulation has lost some of its original ideas. The reason for this was unsolvable discrepancy amongst member states on certain issues, such as taxation, worker participation, and management structure. Although the Commission tried to accommodate all parties involved with cutting back rules and leaving room for choice, no agreement could be reached. The result of pleasing everyone seems to be a mixture of various national laws with a kind of 'opt for system' instead of a common European regulation. However, to this point it appears to be the only possible compromise and shows to some extent that Europe is not yet ready to give up its national casing. Therefore, the European Company of today could be described as a system with 27 different variations.^{10, 11}

2.3.2 Present Developments

In 2004 when the European company was finally introduced it seemed that there was not yet much of acceptance. In fact, only a small number of firms actually decided to take the step and to convert into a SE between 2004 and 2005. One of the first companies that adopted the SE status in 2004 were: Strabag Bauholding from Austria, Media Corner from Belgium and Galleria di Brennero Brennerbasistunnel from Austria. Other well-known firms followed later, such as Finnish Elcoteq in 2005, Allianz and Fortis Intertrust in 2006, and Sampo Life Insurance and Porsche in 2007. However, recent trends show that the European Company becomes more and more popular around Europe. A sign for this trend is the considerable increase of established SEs during the previous year; whereas in June 2008 only 182 companies were registered, in October 2008 the number of firms jumped up by over 100 new registrations to 284 companies.¹² Moreover, in March 2009 established SEs accounted already for 347 companies. This on the other hand means that the amount of registrations has almost doubled during only nine months. The following table shows the

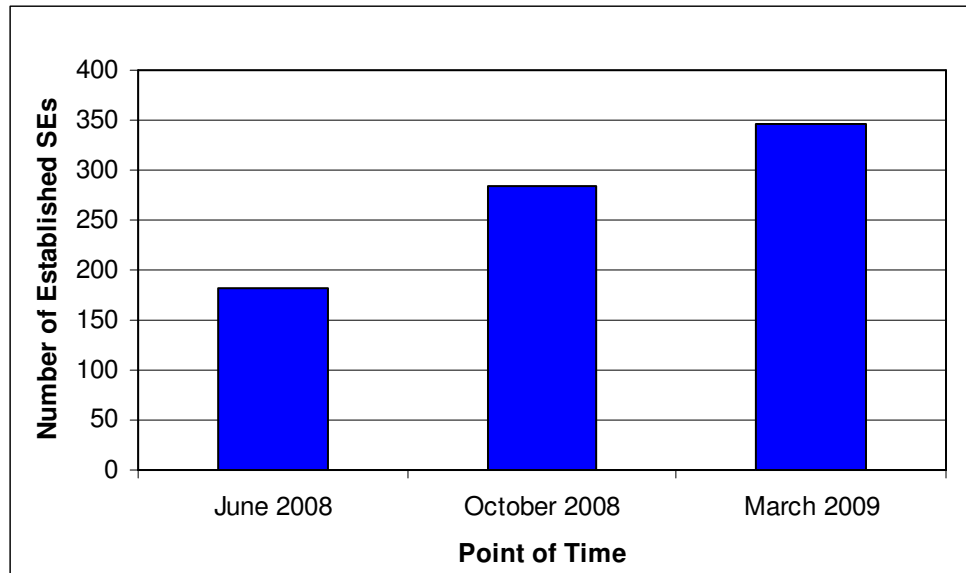
¹⁰ Tavares Da Costa and De Meester Bilreiro (2003), page 1 - 7

¹¹ Lange (2003), page 41 - 57

¹² Information according to European Trade Union Institute, and a report by Kelemen (2008)

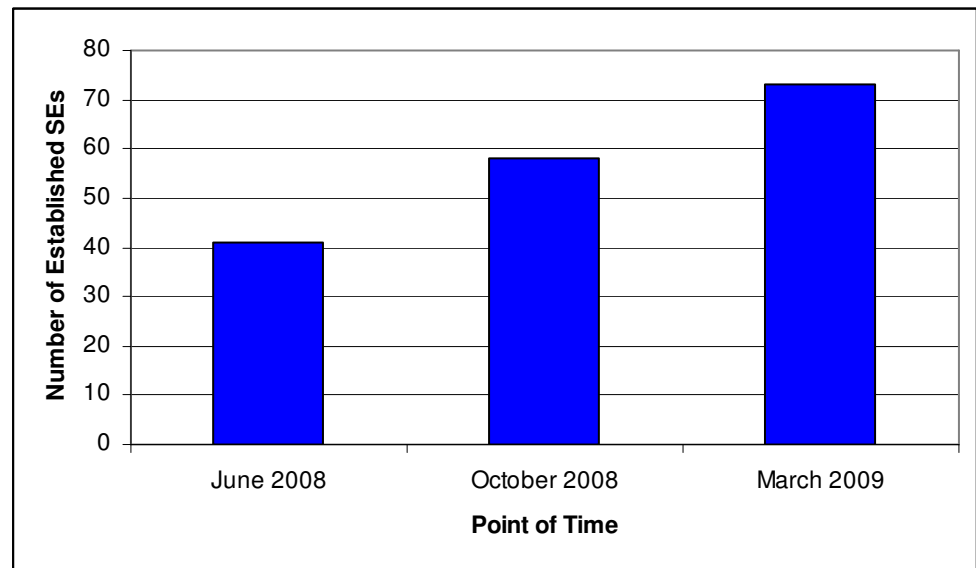
dramatic growth. The figures used in this graph and other following figures are provided by the European Trade Union Institute in relation to the SEEUROPE project.

Figure 1.0 – Growth of Established SEs between June 2008 and 2009



However, it is to notice that the data used in Table 1.0 is based on the total amount of established SEs, which means that also empty companies without any employees, or companies without any operations or activities are included. Therefore, it needs to be kept in mind that the number of normal SEs with employees and business operations amounts only to 73 in total. Nevertheless, the same trend and strong increase of new establishments can be recognised amongst these normally established businesses. As Table 2.0 shows, these normal Societas Europaeas have increased by 32 new establishments which means that the number of these SEs has grown by almost half within less than one year.

Figure 2.0 – Growth of Established SEs with Employees and Operations (Normal SEs) between June 2008 and 2009



Further analysis in regard to established European Companies can be made by looking at the dispersal of established SEs across the different European countries, as shown in Table 3.0 and Table 4.0 below. However, it needs to be kept in mind again that this analysis is only looking at regular businesses that have employees and operational activities.

Figure 3.0 – Dispersal of a Normal SE across EU Member States in Percentages

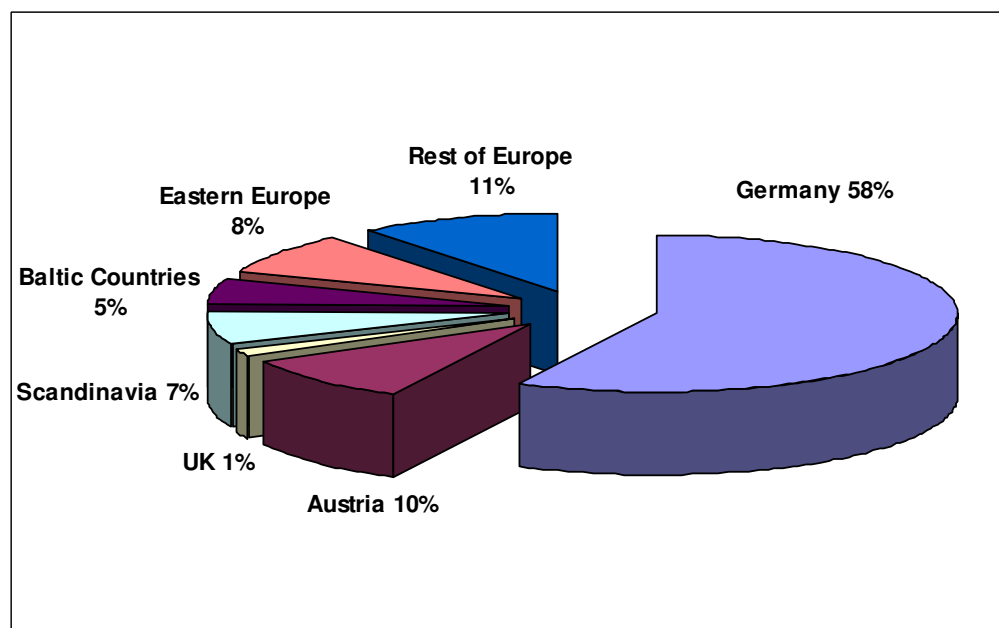
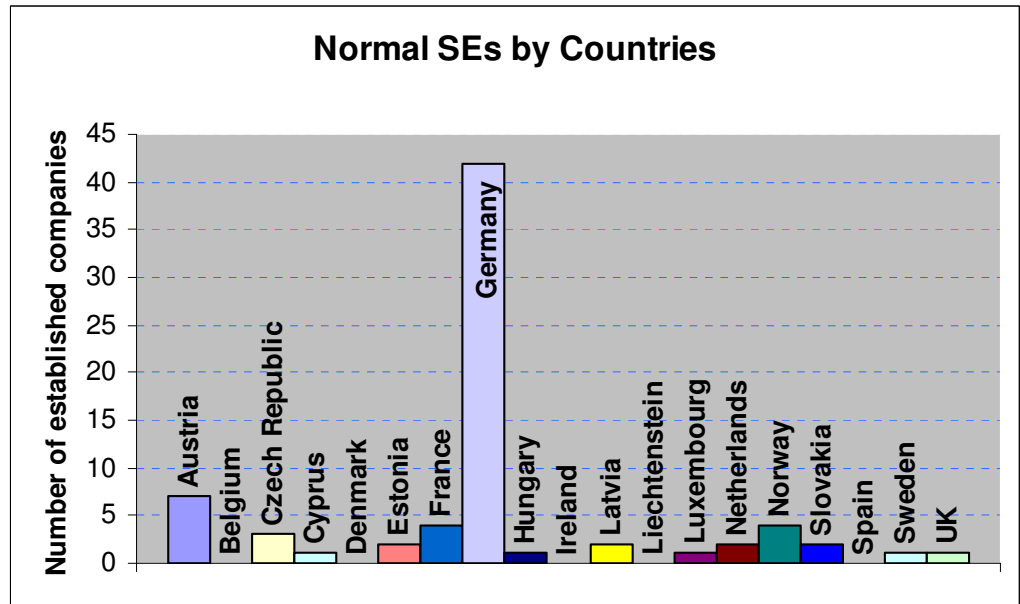


Figure 4.0 – Dispersal of a Normal SE across by Member States



As can be seen from the tables, the country with the greatest number of SEs is Germany, followed by Austria. Within other European locations, such as the United Kingdom or Ireland, the new corporate structure does not seem to be as popular. Possible reasons for this phenomenon are discussed in chapter 4.2 – Scepticism in the United Kingdom.

3 ADVANTAGES AND DISADVANTAGES OF THE SOCIETAS EUROPAEA

The practical utility of the so called Societas Europaea is very much disputed. Supporters will present a long list of advantages, whereas detractors will be able to point out certain disadvantages or room for improvement. However, all positive and negative critics share one common ground: the need for a conjoint legal basis of trade for European companies. Indeed, the need and request for such new corporate systems has been rather strong. Therefore, additional corporate systems and statutes have been elaborated that are complementing the Societas Europaea. These forms are the European Cooperative Society (SCE), which came into force in 2006 and shall facilitate operations of transnational companies, and the European Private Company (SPE) which is still under preparation.¹³ As mentioned earlier, viewpoints towards the utility of the European company can differ quite strongly, depending on the angle of observation. The following section will discuss various perspectives, and will refer to positive and negative aspects of the SE status.

3.1 ADVANTAGES

3.1.1 Liberalisation of European Trade

Comparing the early years of European cooperation and direction to form a common European trade area with the present situation and views, it can be discovered that there has been a strong change from a more protective realistic point of view towards more liberal viewpoints. During the past decades, most of the member states were strongly tied to their national law and traditions. As a result, there was little willingness to give up certain traditions and to make compromises in favour of a coalescence of Europe. However, today actions and personnel in crucial positions are very much sharing liberal characteristics. A continuously expansion of member states is aspired at, as well as aiming at totally harmonising trade, business, working principals, and even joining global trade

¹³ information according to web pages of ETUI

agreements. The price for this is to give up national legislation and principles. Within the SEEurope Project this change of policies is clearly stated and expressed as follows:

“Although this topic enjoyed some prominence in the public perception until the 1980s the ‘industrial democracy’ approach, in which codetermination was a decisive element, faded away, at the latest with the fall of the Berlin Wall and the advent of the ‘new economy’ in the 1990s. (...) The European debate on corporate governance and company law is shaped today by the Anglo-Saxon model of corporate governance: the recipe for a successful enterprise, accordingly, lies in ensuring complete openness and transparency for its investors, but only for them. In this context, workers’ participation in enterprise organs is considered an outdated foreign body.”¹⁴

This movement of the EU towards much more liberal politics has been sensed as a great advantage for many companies which then decided to establish or change to the status of the Societas Europaea. The European Council Regulation states that “It is essential that companies the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.”¹⁵.

3.1.2 Mobility

According to an article written by Dmitry Marenkov¹⁶ the European company offers the advantage of operating freely in all EU member states without the need of establishing new companies or a need for reestablishment in the respective countries. Concluding, this gives the opportunity for business to move more freely within the European territory and to further remove barriers for trade. An example can be given with the Finnish Elcoteq SE that was first established in Finland, but changed its domicile later on to Luxembourg.

¹⁴ Kluge and Stollt, „SEEurope – Project overview”, May 2008,

¹⁵ Council Regulations (EC) No 2157/2001, page 1- paragraph (1)

¹⁶ Marenkov (2008)

3.1.3 European Mindset

Most of the companies that have converted into a European company have argued that the conversion will bring a long a more international image and will show the readiness for European wide integration. For example Allianz SE and MAN believe that it becomes more and more important to think on a European level in order to strengthen the companies' positions in the market. With the help of the new corporate form the integration of all business locations within Europe can be further integrated. Additionally, the message of the Societas Europaea being a rather liberal, innovative and transnational corporate instrument within the European Union will probably also reach foreign investors and may arouse their interest.¹⁷

3.1.4 Administrative advantages

Some further advantages lie in the field of administration, and are concerned with the facilitation of restructuring of a company, and the possibility of greater reduction of administrative costs. The European Commission refers to a quiet astonishing high number in regard to possible cost reduction.

“... the savings in administrative and legal costs from operating through a SE rather than a traditional subsidiary structure could amount to € 30 billion per year throughout the EU...”¹⁸

Moreover, if necessary it is rather easy to change the registered head office within the European Union, and simplified profit distribution system, as within a European company profit distribution is no longer bound to national borders and can be transferred to sub-companies.

¹⁷ Montfort et al (2008)

¹⁸ Aitken and Morgan (2004), page 1348

3.1.5 Tax Savings

As a basic principle, the *Societas Europaea* follows the same tax regulations as any other national company does within a specific member state. As a consequence, no major differences or advantages arise for a SE in regard to taxation.

However, there are indeed a number of positive aspects that the *Societas Europaea* entails concerning taxation. First of all, due to the possibility to relocate the main registration of the SE, the company is theoretical able to move to the location with most attractive tax regulations. Concerns were expressed by countries with high tax rates, such as Germany or the United Kingdom, fearing that their location's attractiveness could be diminish. However, in practise firms do not seem to take advantage of this opportunity, since most of the normal SEs with employees and operations have their registered domicile in Germany where strict taxations rules apply and tax rates are comparable high.

Another advantage in regard to taxation is the transfer of the registered office of a SE to another member state will be handled tax neutral, meaning that no tax issues will accrue because of domicile relocation. Another advantage is the untaxed movement of assets and resources between different branches of the SE across country borders.¹⁹ Additionally, it is possible to eliminate VAT (Value Added Tax) on services provided between separate entities of a *Societas Europaea*.²⁰

3.1.6 The European Company – a multi- corporate form

The Council Regulations leave room to choose a most suitable corporate structure which differentiates the SE from other usual national corporate systems. Article 38 (b) of the legal document of the *Societas Europaea*²¹, the Council Regulation, states that the decision whether to adopt a two- tire or a one- tire system lies in the hands of the founders of the SE. The terms two-/- and one- tire system relate to the traditional national corporate forms of Germany and the UK that were used as models. The one- tire system relates to the Anglo- Saxon model that only requires one administrative organ to manage and control within a firm. The two- tire model on the other hand is practiced according to German law

¹⁹ Wenz, information provided by ETUI – Worker Participation

²⁰ Aitken and Morgan (2004), page 1348

²¹ Council Regulations (EC) No 2157/2001, page 12, section III-Structure of the SE, art. 38 (b)

and requires two organs. That means that management of a firm and supervision are separated from each other, meaning that next to the board of directors a supervisory board exists that engages as a observing and controlling organ.²² The free choice of both systems makes it possible that an originally German company is able to assign the traditional two-tire system and to only establish a board of directors. Consequently, this will reduce costs for the company and bring less bureaucracy. There will be more power in the hands of management. Furthermore, firms under SE status that have chosen one of the above mentioned systems are free to change the system at any time. Reason for setting such a free construction of the law is to serve all national legislations of EU member states.

3.1.7 Minimisation of Labour Participation and administration

Meeting an agreement on the issue of labour participation rights and practices has been impossible for a long time. A solution has been that the legislations discusses this point rather loose and leaves space for interpretation. It offers the companies a choice of the degree of workers' rights to participate in decision making processes. This in return offers opportunity to companies with traditionally high obligations on workers' participation rights to cut down and to escape these national regulations via the negotiation process during the establishment of a SE. This particular fact can be used as an argument why so many German companies have adopted the European corporate form.

However, there are certain limitations that are controlled through the Council Directive that all parties need to agree on the set rules by voting. The Directive also regulates that worker representatives need to be involved in the voting procedure.

²² Blanke (2005)

3.2 DISADVANTAGES

One can argue whether EU legislation and trade policy really is as liberal as it appears and would like to be, and whether there it is really attractive for most companies. One fact to consider is the slow and careful acceptance of the new corporate form and reasons for this.

Moreover, the earlier mentioned rather flexible law on employee participation has caused great opposition, especially within Germany, and nevertheless there are still certain obligations towards inclusion of employee representation which is negatively perceived by other countries.

Another possible reason for a reserved willingness to transfer businesses to the new corporate form is that even when via traditional national corporate forms the business and trade across European borders has become relatively easy. In December 2005, the European Court of Justice has ruled that transnational mergers are also possible for other national corporate statutes, and are not anymore only a privilege of SEs.²³

3.2.1 No common legislation on EU level

One main argument against adopting the SE status and possible reason for the cautious acceptance is the failure of creating a fully uniform legal basis, since not all issues are regulated by SE law and therefore fall under national law of the various countries of companys' operations. This means that the initial goal of forming a common trade area is not achieved. One crucial area that is not governed by the SE regulation is taxation.

Furthermore, each member state has compiled national implementation laws. Differences concerning these national implantation rules can be rather small or quite significant depending on the respective countries. The country implementation laws of the United Kingdom and Germany are presented in chapter 2.2.1. Consequently, there are as many variations of the Societas Europaea as there are member states.

²³ Weiss (2006)

3.2.2 Absence of equal social policies

Another point is the absence of a common social policy. Therefore, all member states follow their own, customised systems that partly differ a lot from each other. As a result, companies are still forced to adopt the various national regulations and free movement of workers is still hindered. Examples of social policy differences are different quotas for firms in regard to contribution and handling of unemployment issues, illness of workers, pregnancy and maternity leave, and old age insurance.²⁴

3.2.3 No common Taxation System

The following paragraph will look more closely at major disadvantages of taxation issues of a European company. However, since this subject is very wide and a detailed analysis of all involved aspects would go beyond the scope of this paper, only the main points will be mentioned.

Probably one of the biggest drawbacks and grounds for improvement of the system is the regulation of taxation. Compared to traditional national corporate structures the European company does not offer advantages in this field. Within the legislative provision, the EC Council Regulations, tax matters are not mentioned or determined. In such cases when the legislation remains tacitly and does not give any directions, the law of each single European country will apply. Hence, handling of taxation matters are country specific and may differ strongly from country to country. For that reason, although being a European company various country legislations will apply for the SE adequate to the number of countries it is operating in. Moreover, existing double tax agreements between two countries are effective. This matter of fact equates the European company with any other traditional corporate form or multinational firm in regard to taxation. This means in practise, corporation tax for a SE in the United Kingdom amounts to 28 % and to 29.8 in Germany, as for other local corporate enterprises, whereas in other countries such as Ireland and most of the East European countries the percentage rates are much lower with 10.0 – 21.0 %.²⁵ Appendix II gives an overview of tax rates of European countries.

²⁴ Carporaso (200), chapter II

²⁵ percentage rates are from 2009 and are provided by the European Commission

Additionally, other cross- border tax issues will accrue, such as withholding taxes which for example are imposed on income from capital investment (capital gains tax).²⁶

Companies operating in several European countries expected and hoped that the new European corporate form would create a common tax system that would facilitate and ease the difficult cross- country taxation. Since this was not achieved, various critical articles and papers have been published which bring up this problem.

“Analysts have long argued that the SE would only become a desirable alternative to a large number of groups if it managed to solve the biggest worry for multinational companies operating in Europe – namely the different tax regimes.” (Hugh Williamson)²⁷

Although, the number of established SEs has increased considerably, the vagueness and unsettled issue of taxation within the EC Council Regulations detained various companies from conversion. Therefore, the corporate form of the SE would certainly become more popular and more European firms would decide in favour for the European company if a solution could be found. As discussed by Aitken and Morgan, there are three possible answers. International Accounting standards could be used, though they are rather serving investors’ requirements than tax man. Another option could be the creation of a total new set of European taxation rules. However, also this solution will probably be difficult to realise, since the member states seem to be very bound to traditional systems and are unwilling to make compromises. The last alternative mentioned could be “Home State Taxation” (HST). HST means that the taxation regulations of the country of registration form the basis for a SE’s income taxation. The paid taxes to the home country of the SE will be then allocated to member states that the SE is operating in.²⁸

3.2.4 Controversial Issue of Worker Involvement

Where as some parties feel that there is a loss of labour participation rights within a European company, other voices are considering the new corporate form a force to an unknown practice. For example many German trade unions fear that works will loose their

²⁶ Aitken and Morgan (2004), page 1346

²⁷ Williamson (2006)

²⁸ Aitken and Morgan (2004), page 1347

traditional right, whereas many British firms consider the regulations of the SE as force to guarantee labour participation rights that are not necessary according to national law. Therefore, it seems that the European company appears less attractive to business from countries with Anglo- Saxon business roots.²⁹ Moreover, since German national law enforces strong rights for workers, German companies felt a threat of being avoided by foreign investors and potential business partners. Reason for this is the clause of the Council Regulations that states that national law of the country of main business activities will apply for the matter of worker participation in all affiliates of the SE. Therefore, partners and investors from other countries might become sceptic to cooperate in order to avoid “infection” with strict obligations.^{30, 31}

²⁹ See chapter 2.3.2, figure 3.0 and 4.0

³⁰ refer to section 3.2.1 - Minimisation of Labour Participation and administration

³¹ Sucher (2003)

3.3 DISCUSSION ON WORKER INVOLVEMENT

Discussions on the topic of employee involvement within the SE are notably active and often involve a strong tendency for criticism. Since the topic of worker involvement plays an important role, this chapter shall look again in more detail on positive and negative aspects of this issue.

It has been a hot subject for a long time and a conjoint viewpoint by all member states had been impossible for many years. Unlike the commonly employed method of using national laws as base for resolving disagreements and barriers on certain aspects of company law, the discrepancy on worker involvement could not be tackled in the same way. The reason for this is the great dissimilarity of how different states handle the involvement of employees within national legislation.

As a consequence, there has been no agreement on a single unified rule guiding employee involvement until today. Nevertheless, during the years a compromise was made that suits all parties involved. This solution is formulated in the Council Directive by the EC in 2001 and builds a complementing legal paper to the actual Council Regulation on the statute of the SE.

Although many setbacks and compromises had to be handled, the initial viewpoint of ensuring worker involvement has remained to a certain extend, and is stated in article 1 paragraph 2 of the Council Directive

“To this end, arrangements for the involvement of employees shall be established in every SE ...”³²

In order to solve the disagreement on the employee involvement and to find compromises, a group of expert was formed. This group of experts holds the view in their final report that the establishment of employee involvement is best solved via negotiations, country specific regulations and consideration of practices and national law of the original companies that have formed the SE.³³ The SE Council Directive offers the possibility for negotiations between management and labour on worker involvement. These negotiation procedures are

³² Council Directive 2001/86/EC, art. 1, par. 2

³³ Final Report of the Group of Experts, page 4/ par. 40

governed by article 3 to 7 of the Council Directive. Before the actual negotiation process is started a so called 'Special Negotiating Body (SNB)' needs to be formed. This SNB represents the employees of a firm and has the role to negotiate the matter of worker involvement with the management. In case the negotiation ought to fail country specific implementation laws will be applied as an alternative solution.³⁴

Although the Council Directive ensures that all 'SEs' must apply employee involvement, in practise notable differences exist between member states. Reason for this is the construction of the Directive which leaves room for opting for different models. Indeed when comparing the United Kingdom and Germany a significant contrast can be detected. Dirk van Gerven and Paul Storm mention in their book (2006)³⁵ that SE law in the United Kingdom is much more flexible and less strict than in Germany due to the national implementation laws. Both implementation laws are very much orientated towards the respective national regulations. In the case of the implementation of worker involvement in Germany, detailed rules are formulated that give various rights to employees. Employees are for example entitled to co-determination and participation. Co-determination concerns activities of a company and social plans, but also the participation of workers in the supervisory board. Depending on the size of the company, employees have the right to take up to ½ of the seats within the supervisory boards.³⁶ Although the rules on the German worker involvement seem rather strict and give many rights to employees, they are more flexible and less tight compared to national law due to the possibility of agreeing on the issue of employee involvement via negotiations.

On the other hand, the British implementation law represents an absolute contrast. Only very limited rights exist in regard to representation and involvement of workers. One of the few obligations is the right to form a works council that needs to be informed and consulted about developments within a company. However, there are no participation rights according to UK implementation law. Appendix I provides detailed information about the regulation and implementation of worker involvement in all member states of the European Union.

³⁴ Bartone and Klappdor (2005), page 98

³⁵ Gerven and Storm (2006), page 253 and 254

³⁶ Information is according to the European Commission and is presented in Appendix I – National Implementation of Worker Involvement, page II

From the view point of company management, the new corporate form offers more freedom to German firms concerning worker involvement and can be more flexible in regard to decision- making processes. On the other hand, British businesses might fear that stronger worker involvement could be imposed due to the negotiation process and might therefore, disinclined to adopting the SE status. However, also from the German side concerns were raised. There was a great fear that the regulations for the European Company could form a threat for national corporate systems. It was suspected that due to more flexible regulations on worker involvement, regular German company types would considerably loose in value. Others even voiced their concern that Germany as a country might even loose its attractiveness and competitiveness on the market, and foreign investors could possible stay away. Moreover, also companies from other European member states could possibly avoid establishing a joint SE with a German business, due to force into the strict German regulations on worker involvement. According to the Council Directive, pre- existing worker participation right of one involved company can not be eliminated, but must be adapted to the entire units of the Societas Europaea. Professor Theodor Baums from the University Frankfurt comments: „German undertakings will be discriminated. Nobody from abroad wants to contract the co- determination law.”³⁷

However, in practise Germany has the highest rate of SE establishments, also including the formation of joint companies with partners from other European countries. In fact the rate amounts to almost 60 percent of all regular Societas Europaeas.³⁸ Therefore, the expressed concerns seem not to materialise.

³⁷ Sucher (2003)

³⁸ figures as from Table 3.0, chapter 2.3.2

4 CASES STUDIES

After discussing on various advantages and disadvantages of a European Company from a more theoretical point of view, this section shall take a more practical angle. Real cases of companies are presented that actual have established or converted into a *Societas Europaea*. The example cases shall illustrate how useful or successful the new corporate form has been in practice, and shall put the theory across that is explained in earlier chapters.

4.1 FROM MAN AG TO MAN SE – A SUCCESS STORY

The decision of MAN to convert its business from a traditional German public company into a European Company is one of the newest developments. The plan of the adoption of the new corporate system was announced and proposed to the shareholders during the annual general meeting which was held at the beginning of April 2009. During the meeting, the supervisory board was re- elected to take first steps towards the transformation. Prof. Dr. Ferdinand K. Piëch was re- elected as Chairman of the new MAN SE.³⁹

However, the most recent development within the MAN AG is not the first step towards the greater Europeanization. In August 2006, MAN B&W Diesel AG was converted into MAN Diesel SE. The management aimed to better integrate all unites of the company on an EU – level and to make the company more transnational. It was decided to lean the new SE on the traditional German system. Therefore, the two- tier system and the co- determination was retained, and the company registration remained in Germany.

In a case study conducted by Herman Knudsen and Torsten Müller⁴⁰ the conversion process of MAN Diesel SE is critically analysed. Special emphasis was put on the issue of employee involvement, as well as weighing positives and negative aspects up. One major advantage that was aimed at with the establishment of the European Company was the

³⁹ MAN AG Press Release, 03.04.2009

⁴⁰ Knudsen and Müller (2008)

Europeanization of the firm's activities. In practise this means for example that the German representatives had to give up half of their seats in the supervisory board to their Danish colleagues. Reason for this is the fact that seats are divided according to the number of workers employed, and Danish employees amount to the second largest group after German workers. However, cutbacks had to be faced in regard to worker representation in the supervisory board. The management body wanted to reduce the size of the supervisory from 12 to 10 members. This issue was raised during the negotiation process with the 'Special Negotiation Body', and was successfully enforced. As a result, one of the seats that were beforehand reserved for employee representatives was cancelled. Another cutback concerns the formation of the Works Council. Originally the worker representatives of the SNB aimed at increasing the number of members of the Works Council from 7 to 11 seats. However, management was only willing to increase the number of seats by 2. It is to argue why such requests from the management were accepted by the worker representatives of the SNB. In case of a failure of negotiations, the legislation would have given rights to form a Works Council with 15 members. On the other hand, due to the changes the Works Council has become more mixed and transnational than before. Representatives from all major locations of business obtained a seat. Furthermore, it has to be kept in mind that all other locations of business that traditionally do not follow such tight regulations on worker involvement profit from the new corporate form. MAN has set a positive example for other firms. After the conversion of the whole MAN Group into a SE, employee from even more countries will profit and the company will become truly transnational. The new Works Council is going to have 24 to 31 members and will be composed of a proportional mixture of representatives of all major production sides of the MAN Group.⁴¹ Further details about the agreement for the establishment of the MAN SE are presented in Appendix III.

MAN expects to strengthen their competitiveness by adopting the SE status, and to become an even stronger global player. Furthermore, the new corporate system will offer the possibility to change the company's headquarters to any other business location within Europe. However, the company should take problems into account that have occurred during the conversion of MAN Diesel SE in order to make this process more smoothly and transparent, and to avoid negative publicity. During the conversion of MAN Diesel various difficulties and disagreements were caused because of different view points and perceptions of different country representatives. Another problem was a lack of

⁴¹ Peter Scherrer (23.03.2009), press release

communication and co- operation between the different countries. Often representatives from countries other than Germany were neglected, not up- dated or informed of developments. In order to be really transnational all of the parties need to be involved and integrated. That also means that representatives from all concerned countries need to be better familiarised with the topic of German co- determination. As a result, disagreement and oppositional viewpoints can be minimised.

Concluding, the conversion from a traditional German AG into European Company has been a good decision for MAN Diesel SE and has brought many advantages, such a more integration of all country units, Europeanization, reduction of costs and higher competitiveness. Furthermore, MAN was able to ease the rather strict German rules on worker involvement and co- determination. However, this particular point can be seen as both an advantage, but at the same also as a disadvantages. Reason is the negative publicity and criticism that MAN has received in regard to the changes of worker involvement. Detractors of the SE might even feel that their scepticism and concerns are proved right. However, overall the experience of the conversion has been positive so far and based on the positive experience, the whole MAN Group has officially planned to adapt the SE status.

4.2 SCEPTICISM IN THE UNITED KINGDOM

As presented in Chapter 2.3.2 – Present Developments, the United Kingdom was reluctant in establishing business under the new European corporate structure. In fact, only one normal SE with employees and clear operations has been established so far, namely Betbull Holding SE. Furthermore, there are two other British SE to be named, Schering-Plough Clinical Trials SE and Narada Europe SE. However, both do not employ any workers and are therefore empty. Nevertheless, these companies have still a clear purpose.

It seems difficult to identify reasons for the low acceptance of the Societas Europaea within the UK, especially since the new corporate form seems to be rather close to the traditional British system. However, exactly this similarity might lower the motivation of companies to adopt the SE status because advantages to be gained would be rather minimal. On the other, certain aspects of the SE regulations are unknown in British

business practised, such as the worker involvement. Although the regulations on worker involvement for the UK are very loose and flexible, firms might fear that the European company would rather have a negative effect by imposing additional rules on workers' rights. Tessa Barras even states in an article that employee involvement is seen as "... something traditionally alien to English company law."⁴² However, the British implementation law does not include any co-determination regulations and limits the employee involvement to consulting and informing rights. Stronger worker involvement might only apply in case that a participating company (most probably outside the UK) already has stricter regulations prior to the establishment. The negative impression of British firms towards the topic of worker involvement becomes clear in a statement by Vanessa Knapp, who is the chairwoman of the Law Society's company law committee:

"UK companies are worried about employee participation at board level. There is no tradition of that here and it looks unattractive."⁴³

On the other hand, a general trend toward greater employee involvement can be already recognised in regular British businesses. Maybe in future more Societas Europaeas will be established in the UK.

4.3 AN OPPORTUNITY FOR NON- EUROPEAN COMPANIES

The European Company was created to support firms that operate in various European countries and to lower trade barriers within the EU. Therefore, the Societas Europaea is mainly addressed to companies that have their origins within Europe. However, it seems that the SE becomes also attractive for international companies that are looking for opportunities to enter the European market. Non- European firms can gain foothold for example by establishing a conjoint subsidiary with a European partner. One example is the Chinese battery manufacturer Narada. In the beginning of 2006, Narada set up a European Company together with Eltek from Norway. The joint subsidiary was named Narada Europe SE and is owed at 60% by Narada and 40% by Eltek.⁴⁴ However, in order to fulfil

⁴² Barras (2004)

⁴³ Barras (2004)

⁴⁴ Montfort et al (2008)

legal requirements – namely that at least two participating firms have their origins in European countries – the SE was formally set up by Eltek Norway and Eltek Sweden. The original registration office in Norway was later on transferred to the United Kingdom. The adopted corporate governance structure is the one- tier system and the Narada Europe SE has no employees. Therefore, the company is not obliged to introduce any agreement on worker participation. As stated by the Chief Executive of Eltek, the company sees the main advantage of establishing such a European Company in the fact that registration office and headquarters can be easily transferred to another European country.⁴⁵

Due to the continuous trend of globalisation the European Company could come more and more important for firms coming from India, Russia or China during the close future.

⁴⁵ Sandra Schwimbersky (2007), Company Fact Sheets prepared for ETUI

5 CONCLUSION

The creation of the Statute of the *Societas Europaea* has gone through a long development process and many compromises were made in order to achieve a common agreement. Some original intentions were significantly changed and the original supranational form of the statute of the European Company has dropped away. On the one hand, it is deplorable that such changes were made, but on the other hand it seemed to be the only solution to reach a common agreement due to the unwillingness to give up national traditions.

One of the main aims of the research work was to identify whether the new European corporate form does really facilitate trade within Europe and whether it is a useful tool for European companies. According to findings, the *Societas Europaea* does offer a wide range of advantages and a general judgement can be made that this corporate form is a positive achievement. On the other hand, certain aspects of the statute remain questionable in regard to the attractiveness and usefulness.

Most of the companies that have established a European Company or are still planning to do so, consider one of the main advantages that the SE creates the image of being one unified European company. Such a European mindset is often seen as a growing trend that should be not missed. In the case of MAN, Europeanization has played a crucial role and has turned MAN into a transnational business that has given up national boundaries and traditions. Through its transnational nature MAN has exported the German co-determination rights of workers to other European countries where the company is operating in. Although foreign employees might consider such a change as positive, from a business point of view the influence of certain country specific traditions which are unknown to other member states might be perceived as threats. Therefore, it is not surprisingly that the United Kingdom has remained very sceptical and cautious towards the establishment of European Companies. It is argued that the fear of any kind of regulation on worker involvement is a reason why the *Societas Europaea* appears to be rather unattractive and repulsive for British firms. However, the topic of employee involvement has remained highly controversial. A lot of critique was expressed by German trade unions and workers in regard to the more flexible structure of worker participation rights. Nevertheless, it is to mention at this point that although there is the possibility of reducing employee involvement through negotiations, it is impossible to avoid it. The standards of

worker involvement for a German SE are still outstanding in comparison to other European norms. Despite all critiques, Germany is the country with the greatest rate of conversion and therefore, the overall perception of the new legal system seems to be perceived positively. One most likely reason for a stronger acceptance in Germany is that the regulations of the *Societas Europaea* were partly created on basis of German national law and therefore, are rather familiar. Furthermore, large German corporations, such as Allianz and MAN, have successfully established a SE, and therefore, they might be seen as a positive role model. The possibility to reduce worker participation during the negotiation process appears to be another incentive for German firms. However, this particular incentive is often negated as being an aspired advantage. Nevertheless, real cases, such as the MAN case, have shown that a reduction of worker involvement is welcomed and aimed at. In the case of MAN, it was agreed to reduce the supervisory board by two seats, including the seat of one employee representative. The reason for this is that due to less employee participation, the number of representatives in the supervisory board can be decreased which results in administrative cost savings and possibly also in less influence from the workers' side.

Practical experience has also revealed that not only companies within the European Union are able to profit from the *Societas Europaea*, but also non-European businesses that want to enter the market. Furthermore, the SE can be a tool to harmonise different units or branches of one company. Therefore, a SE might be useful for a company operating in both the UK and Germany. The two national corporate systems that are very dissimilar could be harmonised with the help of a common corporate structure.

A major deficit of the European Company is the fact that it has no truly uniform legislation. That means that the European Company has lost its supranational nature during the development of the statute. As a result of disagreement and discrepancy, certain legal aspects, such as taxation and partly worker involvement, were left to national law of each of the member states. Due to the absence of a unified settlement on taxation, there are no differences between national corporations and SEs in regard to this specific aspect. Furthermore, worker involvement is regulated different in each of the member states according to respective national implementation laws. Moreover, companies have the choice between adopting a one-tier and two-tier managerial structure. Reason for such a flexible construction of the statute is the aim to please all member states and to form a corporate model that would be accepted by all of them. However, some countries, as for

example the United Kingdom, feel that unknown, country specific practises are obtruded to them, such as the regulations of employee involvement. Consequently, the European Company is seen as less attractive in the UK which is reflected in a very low establishment rate of SEs. This refers to the second part of my thesis question of whether the Societas Europaea is one model that fits all member states. The European Company is created to suit all countries in the EU, but as a result of this attempt it has many variations and it is not one single model anymore. Additionally, all the mentioned disadvantages form the reason why the Societas Europaea has not eliminated all trade barriers within the European Union. Consequently, one can argue whether these disadvantages are the reason why the SE has not been as popular as expected, especially during the first years of its existence.

Due to the deficits mentioned above, it seems crucial to further develop and improve the policies and legal papers of the Societas Europaea in order to make this new corporate form more attractive to companies. To achieve further improvement a greater integration of general EU policies is needed as well as a stronger sense of community among member states. Suggestions for improvement are the creation of a common tax system that will no longer be bound to national legislation. A supranational tax system will simplify all cross-border taxation issue that SEs still have to handle. Since many businesses within Europe had awaited a unified taxation settlement, the creation of such will make the corporate form of Societas Europaea much more popular and it can be expected that the conversion rate would explode. However, further research and studies should be conducted in order to provide more detailed instructions on how such a unified tax system would look like and whether it would be realisable. Furthermore, possibilities need to be identified that make the SE more equally attractive to all member states, and not only to particular countries. Thus, finding a solution will be extremely difficult, since the main reason of reluctance and scepticism in some countries, such as the United Kingdom or Ireland, are worker involvement rights that are unknown practises to them. A possible solution would be to withdraw the regulations on worker involvement in countries where worker participation is not a tradition. However, this option would result in a further drift from an integrative legislation. Indeed, there is a lack of studies analysing the reasons for the uneven distribution of established SEs throughout Europe. Further research should be conducted regarding this issue, since it could help to identify possible improvements and how the statute of the European Company could be reformulated in order to be more appealing to all member states. Another area that leaves room for future studies is the analysis of more real cases of companies that have established a SE. During the process of this paper, it

turned out that there is low or even no willingness from companies to provide any information on their conversion procedure, results or success. However, practical experience is also essential for further developing the regulations of the *Societas Europaea*. There is especially a lack of case studies for SEs established in countries other than Germany. Therefore, more cases studies should be conducted in all member states – most probably via the European Commission itself or other organisations on European level, such as the ETUI – and the success rate and outcomes of the establishments of SEs should be analysed.

However, it is questionable if the European Commission would be really willing or able to revise and adapt the Statute of the SE further in order to develop a truly supranational corporate structure. This would require resuming long negotiations between the various member states and it is doubtful that common agreements on such delicate issues, such as taxation, can be achieved at present. As seen in the past, although the economy seeks for more harmonisation, the European member states are still very attached to national traditions in regard to cultural issues, as well as business practises. Therefore, one can argue that the outcomes and achievements of the *Societas Europaea* have been rather revolutionary and the best possible solutions were combined in the Statute of the SE. It simply seems that Europe is not yet ready for Europeanization.

Summing up, the SE can be considered as a model that fits all member states - or more precisely, as model that has been designed to suit all EU countries. Regardless, various member states do not feel that the *Societas Europaea* is tailored or suiting country specific needs. On the other hand, due to the efforts to create a corporate model that would fit all member states the SE has lost its supranational character. That means that rather than having one single regulation, the statute of the SE requires different national implementation laws and has as many variations as member states. Consequently, in order to create a uniform corporate structure, there must be a willingness of all member states to make compromises. It needs to be understood and accept that a single model combining the different corporate systems of all the European countries is only possible by giving up certain national traditions or by braking known moulds. Furthermore, it is to conclude that after weighing up positive and negative aspects in regard to the new European corporate mode, the *Societas Europaea* is a tool that facilitates trade within Europe, but is not fully eliminating trade barriers, and therefore leaves room for future improvements.

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APPENDIX I – NATIONAL IMPLEMENTATION OF WORKER INVOLVEMENT

Worker' Participation in company Bodies

Country	Body		Sector		Worker representation
	BD	SB	Public	Private	
Germany		X	+500 employees including groups		1/3 seats if 500-2000 employees 1/2 seats if +2000 employees, chairman with casting vote appointed by shareholders 1/2 seats in mining/steel if +2000 employees, worker director with the agreement of the employees
Austria		X	including groups		1/3 seats
Liechtenstei					
Netherlands		X	ltd/plc + 100 employees K > 22,5 million guilders		right of veto on appointment of members of the SB and management board joint meetings of works council and SB
Spain	X		+ 1000 employees		choice between joint committees and 1 member on the BD per union with over 25% of the UR and members of the works council
Portugal	X				
Greece	X		"socialised" sector		1/3 seats on the BD and 1/3 seats on the "representative assembly of social control"
France	X	(X)	companies with BD or SB		2 members of the works council (or 4 members if 3 colleges) attend meetings in an advisory capacity only, possibility of tabling desiderata, with the right to receive a reasoned reply
			+ 200 employees		2 members if 200-1000 employees, 1/3 seats if + 1000 employees
				possible under the articles of	Maximum 4 members (5 if quoted company) or 1/4 seats
Belgium	X				
Luxembourg	X		limited with public interest	limited liability company + 1000	1/3 seats
Denmark	X	X	ltd/plc + 50 employees groups		2 members to 1/3 seats 2 members
Norway	X		+30 employees possible for groups		2 members to 1/3 seats (+ 1 or 2 observers if +200 employees and no joint assembly) or, where + 200 employees, constitution of a joint assembly with 1/3 seats which elects the BD and has decision-making powers on investment and major changes
Italy	X				
United	X				
Ireland	X		11 bodies		1/3 seats
Sweden	X	(X)	+25 employees also at group level		minority: 2 members (plus 2 alternates); 3 members (plus 3 alternates) if +1000 employees in Sweden
Finland	X			+ 150 employees in Finland	depending on agreement otherwise: one to four members representing 1/4 seats
			groups +500 employees in Finland		
Iceland					

BD=board of directors / SB=supervisory board / UR=union representation

Source: European Commission/ Department of Employment and Social Affairs - data as from May 1997

Representative Bodies with a Say in Economic Matter

Country	Representation	Limit	Members	Chairman	Form of intervention			
					Information	Consultation	Codetermination	Negotiation
Germany	Betriebsrat Works council	5	elected	elected	XX	XX	XX	X
Austria	Betriebsrat Works council	5	elected	elected	XX	XX	XX	X
Liechtenstein	Betriebs-kommission Works council	50	elected	elected	X	X		
Netherlands	Ondernemings-raad Works council	35	elected	elected	XX	XX	X	X
Spain	Comité de empresa Works council	50	elected	elected	X	X		X
Portugal	Comissioe de trabalhadores Workers' committee		elected	elected	X	X		X
Greece	Workers' council	50 (20)	elected	elected	X	X		X
France	Comité d'entreprise Works council	50	elected + management	employer	XX	XX		X
Belgium	Conseil d'entreprise Works council	100(50)	elected + management	employer	XX	XX		X
Luxembourg	Comité mixte d'entreprise Joint works council	150 (SD:15)	1/2 elected 1/2 management	employer	XX	XX		X
Denmark	Samarbejd-udvalg Cooperation committee	35 (UD:5-6)	1/2 elected 1/2 management	employer	XX	XX		X
Norway	Bedriftutvalg	100 (UD:-)	1/2 elected 1/2 management	alternating	XX	XX		X
Italy	RSU Unitary trade union representation	15	2/3 elected 1/3 appointed	elected or appointed	X	X		XX
United Kingdom	Shop stewards (joint consultative com.)	-	appointed (joint)	-(variable)	X(X)	(X)		XX
Ireland	Shop stewards	-	appointed	-	X	X		XX
Sweden	Förtroende-man Union delegates	-	appointed	-	X	X	X	XX
Finland	Luottamus-mies Union delegation	-(30)	appointed	appointed	X	X	X	XX
Iceland	Union delegates	5	appointed		X			XX

SD = Staff delegates / UD= Union delegates

Source: European Commission/ Department of Employment and Social Affairs - data as from 1997

APPENDIX IV – OVERVIEW OF TAX RATES OF EUROPEAN COUNTRIES

Country	Corporate Income Tax Rate in %
Austria	25.00
Belgium	33.99
Bulgaria	10.00
Cyprus	10.00
Czech Republic	20.00
Denmark	25.00
Estonia	21.00
Finland	26.00
France	33.33
Germany	29.80
Greece	25.00
Hungary	21.28
Ireland	12.50
Italy	27.50
Latvia	15.00
Luxembourg	28.59
Malta	35.00
Poland	19.00
Portugal	26.50
Romania	16.00
Slovak Republic	19.00
Slovenia	21.00
Spain	30.00
United Kingdom	28.00

Source: European Commission

APPENDIX III – AGREEMENT OF MAN AG ON THE ESTABLISHMENT OF THE EUROPEAN COMPANY



Press Release

23rd March

2009

Further key features of the MAN SE agreement

MAN management has agreed to extensively involve the SE works council - composed initially of 26 representatives from throughout Europe – in decision-making on matters of strategic importance for the company. The SE works council will meet regularly at least twice a year and will be supported by a nine-member steering committee. Remarkably, in the present context of uncertain change and development, the agreement also contains a clause to renegotiate if necessary the sections of the agreement concerned in the event of important structural changes.

Composition, bodies and measures concerning the functioning of the SE Works Council

- The maximum number of members of the SE Works Council can vary in accordance with the total number of employees (24–31 members). The principle of its composition is to include representatives from all important production sites.
- Composition shall be in accordance with the transnational composition and distribution of the MAN workforce: each member state shall receive one (1) seat in the SE Works Council for every 2,500 employees and countries with less than 2,500 employees will be represented by a member appointed jointly by the group of countries concerned.
- The members of the SE Works Council shall elect a chair, two deputy chairs and a secretary (to keep the minutes). An assistant paid by the company may support the SE Works Council.
- The SE Works Council may form an Executive Committee consisting of 9 members (including the chair and the two deputy chairs), which will be responsible for the day-to-day business of the SE. The Executive Committee may meet regularly six times a year.
- Regular meetings: twice a year (special meetings may also be convened if required).
- Skills and training provided, if required, paid for by the SE.
- An SE Works Council (“SE Works Council”) will replace MAN’s existing European Works Council.

Special rights of the SE Works Council

- In extraordinary circumstances: if the management does not take account of the SE Works Council's opinion, a right to have another meeting with a view to reaching an agreement.
- The agreement is of unlimited duration but its regular termination is possible from 31.12.2016 at the earliest, requiring a simple majority representing at least 75% of the workforce from all EU member states covered by the agreement.
- Renegotiation of the agreement is possible in case of 'structural change': changes which affect at least 20% of the current workforce, changes in the corporate structure or the acquisition of a significant share in another company which will affect MAN as a whole.
- Internal conciliation body to resolve conflicts concerning the scope of the agreement.

Workers' representatives in the MAN SE Supervisory Board

- Eight out of the 16 members of the SE Supervisory Board shall be employee representatives appointed by the SE Works Council.
- Two out of six employee representatives shall be full-time trade union officials proposed by the trade union, which is assigned by the European Metalworkers' Federation (EMF).
- The initial SE Supervisory Board will consist of representatives from Germany (4, including two full-time trade union representatives), Austria (1) and Poland (1).

Source:

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European Metalworkers' Federation

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webpage: <http://www.emf-fem.org/Press/Press-releases/Information-consultation-and-board-level-participation-more-widespread-in-Europe>

