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European company - A new institution
- General information about the European company
- Study and field research on the existing level of information
- Concerns about the European company
- Questions and clarifications
ΟΒΕΣ
Federation of Industrial Workers Unions

TITLE:
European company - A new institution

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PREFACE

Dear Colleagues, dear readers,

European integration, the introduction of Euro as a common currency and the operation of the inner market, create new opportunities for the companies and offer new possibilities for expansion of their activities.

The European Company as a new legal form of company, has the best chances and potential for the exploitation of these opportunities. This fact creates pressures to proceed quickly to the adoption of this legal form of company.

However, the pace followed up to now was extremely slow. The procedure has been initiated thirty years ago, and there is still no final result obtained. The reasons are twofold: on one hand the polynomy regarding company law in various countries and on the other hand the reactions against the adoption of rules for the workers participation in supervisory or management boards of European Companies.

As it is well known and it is analyzed in the respective publications of OBES, the labor movement at a European level has succeeded in Directive 94/95/EC by the European Council within which the European Works Council or the European Enterprise Committee is established. This Directive obliges the multinational companies to inform and consult with their employees about all major decisions.

The European summit, held in Nice in December 2000, has concluded in initial agreement on the European Company and the forms of workers' participation in it.

The labor movement well informed, will continue its fights for the protection of workers'/employees' rights and the widening of trade union and democratic freedom.

Let us not forget that the institution of the SE has been introduced following the pressures of big companies and the labor movement has a new field to fight for further.

The material of this manual along with other useful information about European Work Councils, health and safety etc. is also available on the Internet, namely in the site of OBES www.obes.gr

We hope that the present manual will clarify many topics and will be a useful tool of assistance for all those, employees or employers, who will be involved in the constitution of a European Company.

Aristidis Chatzisavidis
Chairman OBES

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History

The European Company (Societas Europeae, with initials SE, common for all the member-states) after a long course that begun almost 30 years ago, will soon come true. Already there has been a decisive step and the talks turn towards the search of a flexible form that will take into consideration the essence and the differences between the various national systems.

If we go back, in 1970 the European Commission submitted a proposal in the form of a Regulation about the statute of a European Company. But because of the differences between the company law each country has, there have been oppositions that lasted long and had as a result that the Commission submitted a completely new relevant proposal in 1989.

The 1989 proposal for the European Company was divided into two parts:

1. **The Regulation for the operation of the European Company,** which means the statute plan (the final text contains the general regulations that govern a European Company, the ways of founding it and structuring it, the way of forming the annual and unified balance sheet and profit and loss account, regulations about liquidation, insolvency and suspension of payments and other supplemental and transitional regulations).
2. **The Directive for the role of employees** (the final text contains general regulations that govern the role of employees, regulations about the procedure of negotiations and other relative regulations).

This division into two different texts has been kept up until today.

In the beginning of December 2000, the summit held in Nice expressed its satisfaction for the deal accomplished regarding the social aspect of the European Company, that is the role of the employees in it. After Nice the text of the Regulation has been modified considerably and it allows companies of different Member States to realize for the first time transnational mergers.

Both the Regulation and the Directive will be voted after been amended in the future. The following paragraphs refer to the actual proposals for the Regulation and the Directive (November 2001).

The creation of the European Company, which will have its own legal framework, will allow companies that have been formed in different Member States to merge, to form a holding company or common subsidiary as well as a public company which operates under national law and keeps subsidiaries in other Member States, to be converted into an SE avoiding the existing legal and practical obstacles. Plus, public companies as well as limited liability companies that have a presence in the European Union, either registered in more than one Member States or subsidiaries or branches in other countries than that of their head offices, can create a European Holding Company. The establishment of a European Company under the form of a subsidiary can be effectuated by any legal person according to the same criteria. For all the pre-said cases, there is a common prerequisite, that the European Company must cover at least two Member States.

The European Company statute previews two alternative systems for its management.

The **two-tier system** (like the German one) previews **one management organ and one supervisory organ**. The supervisory organ controls the management organ as far as the way it runs the company is concerned. In the supervisory organ participate representatives of the shareholders as well as representatives of the employees.

Vice-versa, the **single-tier system** (like the Anglo-Saxon one) previews **just one administrative organ, which is up to management as well as administration.** The administrative organ is elected naturally by the shareholders. **It is up to the companies to choose between these two systems.**

The capital of the European Company is divided into shares and each shareholder is liable up to the amount he/she has subscribed. The subscribed capital of a European Company is expressed in Euro.

The country where a company is registered is stated by the company statute and must correspond to the place where its head office is located. A European Company can change the country where it is registered according to the foreseen procedures. This relocation requires neither the liquidation of the existing nor the creation of a new legal person. But a plan of relocation must be established and published.

Special provisions have been previewed for the protection of shareholders, creditors, possessors of bonds and other debentures in case of merger, change of legal form from SE to SA, liquidation, insolvency and cessation of payments.

Each European Company is registered in the Member State in a special register that is designated by the legislation of that member state for public companies. Registration and resolution of a European Company are published in the formal journal of the EU to inform each person or part that may be concerned.

The European Company regarding the sorting out of its annual or unified balance sheet and profit and loss account follows the rules that stand for the public companies, which are stated in the law of the Member State where the SE is registered.

The Directive for the role of the employees will be put into power together with the Regulation. **After Nice, the Directive previews that every plan for the foundation of a European Company must be accompanied by negotiations with the representatives of employees, for their participation in it to be determined and organized.**

For this goal a special negotiating team is formed that represents the employees in the negotiations. **The special negotiating team is put together with similar, but not identical procedures as in the case of European Works Councils.** No European Company can be formed from the general meeting of the shareholders if the type of the employee involvement has not yet been resolved, as stated in the Directive.

The Directive is complex enough and it allows, under specific preconditions, the transfer in each Member State, of all the national rules for employee participation. This fact will in all probability have as a result that it will not exist a single model of European Company but that it will differentiate from country to country or even from company to company.

Where no agreement has been concluded, in addition to information and consultation, arrangement must also be made for employee participation in the SE as follows:

- In the case of holding companies and joint ventures, where the majority of the employees in the participating companies were entitled to participate in their company;
- In case of conversions, the participation arrangements in the company prior to conversion shall continue to apply;
- In the case of mergers, where 25% of the employees were entitled to participate (although, in the case of companies formed by merger, the Member States have the choice of whether to apply or not the participation rules, subject to the right to register the SE);

- In the case of SE registration, all European Companies will have to have their registered offices and their actual head office in the same Member State. No SE may be registered without meeting the requirements of the Directive, except in the case of mergers where there were no participation arrangements prior to the merger.

STUDY AND FIELD RESEARCH ON THE EXISTING LEVEL OF INFORMATION AND CONCERNS ABOUT THE SE

1. Aim and subject of the study

The aim of the present study was to conduct field research concerning the level of information both the Greek employers and Greek trade union officials have on the European Company.

Specifically the study has detected:
- the existing level of knowledge on the European Company
- sources of information of the employees
- the present status of participation of employees in decision making process of management
- the level of information of employees on important matters by their company
- the opinion of employees for the European Company / advantages - disadvantages
- other subjects (such as who should participate in the negotiating body, which are the minimum provisions and the rights of the representatives of employees in the management or supervisory bodies)

2. Methodology

For the compilation of the present study a research was conducted based on a questionnaire and two round tables. The study has a qualitative character.

More than 60 information files and questionnaires were distributed to respective companies with cross borders activities. The results included 11 questionnaires answered by 11 Greek companies which were collected by OBES. Two questionnaires were answered by companies that belong to the same multinational group.

3. Conclusions

Desk research undertaken has shown that the majority of persons interviewed, most of whom participate actually in EWCs are completely ignorant as far as SE is concerned, or at least were so before the information received and discussions held in the framework of “Une entreprise pour l’ Europe” project. For those, who were informed, information come mostly through the press, trade unions, OBES and in a few cases through their company. Nearly everybody assessed existing information as not sufficient and not adequate.

In the question about how they assess the level of workers’ participation in decision making when it refers to subjects that affect directly them, the dominant answer was “occasionally”, which reflects the non institutionalized status of workers’/employees’ participation in Greece.

A considerable number of persons interviewed express their concern about the balance between advantages and disadvantages of the introduction of SE for employees. It is also worth-noticing that there is a confusion about who has the right to participate in the negotiating body and what are the provisions of the Directive about the rights of the representatives.

It is an undeniable fact that the European Company as a new institution, will face considerable problems in the beginning. In order that it will be successful it should gain the approval of both the employers' and employees' side.

Globalization, as a strong independent factor exercises strong pressures to both companies and workers/employees towards adaptation. On the other hand globalization is not a purely and solely economical phenomenon. Thus, an urgent need emerges for the creation and call for a new social status able to face the new social dangers and risks, which surpass by far the old vertical relations that hitherto characterized labor and capital.

Social partners have an important role to play not only through the classical forms of trade unionism but also through new forms of action, new tactics and new methods of pressure in order that they are accustomed with the trade unionism of managing change and to fight for better positions and the interests of workers/employees.

During the discussions in the two round tables the following points of attention have been stressed:

- Representatives coming from **all the countries** should participate in the negotiating body regardless of the number (or percentage) of employees that work in this country. The presence of representatives will allow the hearing and taking into consideration of different conditions, culture, legislation that may exist.

- **All types of employees/workers contracts** have to be included in the calculation of the number of workforce by country to participate and benefit from collective bargaining. It is worth-noticing that nowadays there is a tendency for use of flexible work contracts and subcontractors.

- **Control** has to be exerted to a SE. For this reason the country the SE is registered should be the same as far as both management and taxation are concerned.

- The matter of **uniformity of taxation** should be checked more carefully. Tax havens within or even outside of the EU (e.g. Netherlands Antilles) may imply the existence of different types of SEs or the concentration of SEs in a limited number of countries.

- Because it is difficult to achieve cohesion of legislation of all EU countries, employees within the same SE should have **the same rights** following common rules.

- The role of employee representatives should be **substantial and not only advisory**. The existence of SEs should mark a step forward than that of sole information/ consultation which characterizes the operation of EWCs.

- **Both the regulation and the directive need improvement and amendment. They should not be complex but be more tangible for employees.**

QUESTIONS AND CLARIFICATIONS

The following questions and clarifications refer to the proposals for the Regulation about the SE and the Directive about the role of employees.

It is self understood that, these proposals may be changed considerably and be different in their final form.

1. Which are the categories for setting up a European company (SE)?

An SE can be founded in one of the next 4 ways:

- By the merger of two or more existing public limited companies from at least two different EU Member States.
- By the formation of a holding company promoted by public or private limited companies from at least two different Member States.
- By the formation of a subsidiary of companies from at least two different Member States.
- By the transformation of a public limited company which has, for at least two years, had a subsidiary in another Member State.

2. Which are the clauses foreseen by the statute of an SE?

It foresees the implementation of community law that will stand in all the Member States of the EU, as far as founding and running an SE are concerned.
The Community Law in this case consists of two pieces of legislation:
A Regulation that governs company's law rules and a Directive that must be implemented in national law of all Member States, and concerns the workers' involvement.

3. Does the Regulation cover every legal aspect concerning the running of an SE?

The Regulation doesn't cover aspects concerning the operation of an SE, like the tax law, the competition law, the intellectual property law or insolvency law.
For these matters stand the law provisions of the Member States as well as the community law where applicable.
Despite of this fact, there is an effort to harmonize national laws in these matters, so there will not be a selective concentration of European Companies in countries that have for example lower tax rates.

4. What is the relationship between the place an SE is registered and the place its head offices are located?

According to the plan of the Regulation the two of them must coincide obligatorily.
About this point there are some reservations stated by Luxembourg and Holland.

5. Only the big multinational companies can, in reality found an SE?

On the contrary, weight has been put into enabling small or at least medium size enterprises from different Member States, to profit from the benefits of the SE.
For this reason it is stated that the minimum capital for an SE should be no more than 120000 Euro.

6. Which are the advantages of an SE over a classical SA?

SE is designed in that way that it makes the best out of the common economical space.
Synoptically these advantages are:

- Avoidance of the need of keeping a complex system of subsidiaries that corresponds to a money and time consuming multiple-management and reporting system following the labyrinth network of laws and rules of each country.
- Reduction of administrative and legal cost and rise of flexibility and effectiveness in making and carrying out decisions through establishment of a common managing and reporting system.
- Increased ability of the company to respond and to adapt to the opportunities and changes that arise in the internal market
- Improvement of the potential for transnational activities in order that the companies can better cope with the conditions of competition in their sector.
- Augmentation of the chances for pumping money from the international stock markets for transnational projects (e.g. transportation, energy).

It is calculated from the Competitiveness Advisory Group for the Industries that just because of the reduction of managerial cost the enterprises will save about 30 billion Euro.

7. Are there any tax-reductions for the European Companies?

No. An SE will be treated by tax authorities as any public company of the specific sector in that country.
Nevertheless, an SE has to submit just one balance sheet in just one country and specifically in the country it is registered into, and not e.g. 15 ones, one for each country. If that country happens to have favorable tax regulations then the entire SE along with its subsidiaries, benefits from this fact. Unified profit and loss account permits the deduction of losses in one or more countries from profits in others and in this way, payment of less taxes.

8. Will there be a special register for European Companies?

Each SE must be enrolled in the same register as any other, national level, public company.
Therefore, there will be a common register of Public and European companies for each country.
The difference lies in the fact that the foundation as well as any other change in the statute of an SE will be published in the ECs' Official Journal.

9. Which provisions exist about keeping competition rules that the treaty of Rome imposes?

The Regulation proposal, about SEs, mentions specifically in the 3rd article of the introductory note that necessary precondition for the merger of established companies from different Member States who want to combine their staff through that merger, is the respect for the rules of competition (e.g. that they don't create a monopoly).

10. Is founding of a European Company obligatory for the companies that fulfil all the prerequisites put by the Regulation?

European Company is offered as an option to the companies that fulfil the prerequisites of the Regulation and not as an obligation.
In case they don't create a European Company they should keep following the legislation and the procedures previewed in each country they operate, which results in additional costs.

11. What happens if the registered office of a European Company is transferred outside the community?

An SE that transfers its registered office outside the community may be resolved following the application of any person concerned or any competent authority.

12. Which are the governing bodies for the European Company?

The European Company statute provides as governing bodies:

- The general meeting of shareholders.
- Either a management organ and a supervisory organ (two-tier system) or an administrative organ (single-tier system).

13. Which are the differences between single-tier and two-tier system?

- Under single-tier system the European Company is managed by an administrative board, whose members represent the SE towards third parties and in legal proceedings. The administrative board can assign the management of a European Company to one or more members of the board.
- Under two-tier system a management board manages the SE and its members represent the company to third parties and in legal proceedings. The decisions of the management board must have the approval of the supervisory board.

14. Can the same person be a member of the management board and the supervisory board of a European Company that uses the two-tier management system?

It is not allowed to the same person to participate at the same time to both management and supervisory boards of the same company.
In case a seat of the management board is vacant, the supervisory board may appoint one of its members to exercise the functions of the member of the management board. During that period of time, all the functions of the person concerned as a member of the supervisory board shall be suspended.

15. How is the participation of workers in a European Company defined?

Participation of workers in a SE does not mean participation in day to day decisions, which is a matter the management deals with, but participation in the supervision and strategic development of the company.

16. Which models of employees' participation are possible?

- Participation of employees in the supervisory board or the management board.
- Creation of a separate body that represents the employees of the European company.
- Models of participation agreed between the governing bodies or the management teams of the founder companies and the employees, as long as the level of information and consultation stays at least the same as it is stated for the separate body.

17. Is participation of employees obligatory or optional?

Employees' participation is a precondition for the foundation of a European company. The general meeting of shareholders can not approve the formation of an SE unless one of the models of participation has been chosen.

18. Which is the process of choosing the way of employee involvement in an SE?

Any plan to set up an SE must include negotiations with representatives of the employees of the companies concerned with a view to making arrangements for employee involvement in the SE.

19. In which way are the employees represented in the negotiating team?

The members of the negotiating team are elected or appointed in proportion to the number of employees working in each country (one member of the negotiating team corresponds to 10% of the whole of the employees in the concerned companies and their subsidiaries). This number can be increased by 20% so employee representatives from in most cases the small countries, that have a relatively small number of employees, can participate.

20. In which way are the representatives of the employees appointed?

The way of election or appointment of the members of the special negotiating team is defined by the Member State in which the company/subsidiary operates.
The member state can even indicate that the representative of the employees may be a union member, independently from if he/she is working in this company/subsidiary/installation or not.

21. How much time can the negotiations last?

The negotiations can last up to six months from the formation of the special negotiating team. If it is commonly agreed the negotiations can expand beyond the six-month limit, up to one year.

22. What happens if the representatives of the employees and the management that participate in the common negotiating team don't reach an agreement in the predetermined timetable?

In this case stand the provisions mentioned in the annex of the Directive.
These provisions preview the creation of a board for the representation of employees from the company and its subsidiaries or its installations. Representatives will be elected or appointed in proportion to the number of employees that are employed in each member state.

23. Which responsibilities and authority are previewed in the annex of the Directive for the employees' representation body?

The responsibilities of the employees' representation body are limited to the matters that concern the SE or its subsidiaries and exceed the authorities of the respective bodies in a single Member State.
The representative body meets at least once a year with the respective body of the SE after the agendas of the meetings of the administrative board or the management and supervisory board as

well as the documents submitted to the general meeting of the shareholders of the SE, have been presented to it.
The representative body is notified about the progress of the European Companies' activities and its perspective, and gives its opinion about them.

24. Beyond the compulsory annual meeting of the employees' representation body is there any other case of compulsory information-consultation foreseen?

In cases of major concern to the interests of the employees and specifically in cases of relocation, transportation, closing down facilities or companies or collective discharging, the body has the right to be informed, in plenary session or through a restricted committee and to express its opinion to the body of the SE that has the power to make decisions.

25. Which are the rights for the members of the employee representation body?

A European company is obliged to give paid leaves to the members of the employee representation body for them to participate into the meetings, educational leaves if needed, as well as to pay for the organization, translation, transportation and subsistence expenses for the members of the representation body and the restricted representation body.
The members of the committee of employee representation benefit from the protection that the national legislation of the Member State previews for trade union officials and they can be assisted from experts of their own choice.

26. What is the difference between a Directive and a Regulation?

A Regulation constitutes of a law directly applicable to the Member States of the European Union, while the Directive must first be voted by the national parliaments, for it to become an internal law in all Member States.

27. Which procedures remain to be accomplished until the Directive and the Regulation for the European Company are set into full power?

To start with, all the texts must pass again for approval by the European Parliament, because there has been a change about the participation of employees since the time the parliament gave its last consultatory response (January 1991). The European parliament in fact can not exercise veto because the texts are not subject to the co-decision procedure. Instead, it may propose amendments, which are at the discretion of the European Commission to be incorporated or not in the final version. Afterwards, these texts have to be accepted by the Council of Ministers. The Regulation and the Directive will be put into effect in exactly 3 years after their formal adoption by the Council of Ministers.

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