



The research network on worker participation in the European Company (SE)
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SEEurope - Worker participation at board level in the European Company (SE) -
A project of the European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS)
co-funded by the Hans Böckler Foundation
www.worker-participation.eu/european_company

ELCOTEQ SNB NEGOTIATIONS - EXPERIENCES AND PROCEDURES

by

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Foreword

This publication maps the process of converting Elcoteq into a European Company (SE). Since publication has been slightly delayed, several conclusions can be drawn as to further developments. In 2006 it was announced that Elcoteq SE would be transferring its legal domicile to Luxemburg, and a formal decision was taken at Elcoteq SE's Annual General Meeting on 22 March 2007. The decision that was taken after voting will be effective from 1 January 2008.

The perspective of the entire publication will be that of the process of transformation to a SE. The later developments will only be discussed together with the final conclusions.

The document has been written primarily by Tom Stenstrand, who has been supervised by Niklas Bruun. László Neumann has made many valuable text contributions, especially on the situation in Hungary; this was made possible by the SEEUROPE network. Norbert Kluge has provided tremendous assistance and has been most encouraging throughout.

1 Introduction

On 8 October 2004, the Elcoteq Network Corporation (Oyj) Board of Directors released the conversion plan and the report on the conversion of Elcoteq into a European company (SE). These statements of intent meant among other things that the Elcoteq management should start negotiating with its employee representatives on arranging employee involvement at the European level.

Arranging employee involvement within Elcoteq at the international level meant in practice that a representative body (RB) would be established in the company, which would work on employee involvement. The rules and procedures of the RB had to be negotiated before an RB could be established, and these negotiations took place in a special negotiation body (SNB) consisting of representatives from Elcoteq affiliates within the European Economic Area.

The SNB and the management met to discuss arrangements for employee involvement for the first time on 23 February 2004. There were four such occasions altogether, and at the final meeting agreement was reached on the rules and procedures of the future employee representative body in Elcoteq.

Aim and purpose of the study

The aim and purpose of this study is to map the process of the SNB negotiations between the employee representatives from the various countries on the one hand and between the employee representatives and the employer on the other on how the work of the Elcoteq representative body and employee involvement would be organised after the conversion of the company to an SE. The present publication contains background information on both conversion and negotiation procedures as well as interviews with the management, employees and the expert involved in the negotiation process. The interviews were conducted in Finland, Estonia and Hungary.

The study not only tries to follow the process and present views from different angles, but also endeavours to analyze the special multicultural context and its impact on the development of common European representation of employees, i.e. on the negotiation process and its outcome.

2 Background information on Elcoteq SE

2.1 Basic facts

Elcoteq SE is an Electronics Manufacturing Services (EMS) Company that provides electronic manufacturing services for its worldwide customers such as Nokia, Siemens and Ericsson. The company has manufacturing capability in products such as mobile phones and set-top boxes as well as communications network equipment such as base stations, tower-top amplifiers and microwave systems. Over and above its manufacturing capability, Elcoteq is also able to design and develop communication electronics (original design manufacturing, ODM).

At present Elcoteq can be described as a company at an intermediate stage of development between contract manufacturing (i.e. merely producing according to the product design and process engineering provided by brand-name companies) and ODM. Market entry with its own brand-name products, however, is not on the agenda.¹ At present Elcoteq is the only sizeable company in this industry that is registered in Europe. Its major competitors (Flextronics, Jabil, Signaltronics, Tycoelectronics, Solectron, etc.), although present in Europe, are basically global networks, mainly established and headquartered in the US and South-East Asia. Compared to these giants in this highly competitive contract manufacturing market, Elcoteq is a relatively small company.

For its customers Elcoteq provides reduction of business risk, as the future market can be unpredictable. The Elcoteq business logic is to give its customers in the area of communication products structural flexibility in production and the capability to manufacture a wide range of different product lines.

The company operates in 15 countries on four continents and employs approximately 20 000 people. Elcoteq's net sales for 2004 amounted to approximately € 2 950 million. Elcoteq SE is listed on the Helsinki Stock Exchange. (Source: www.elcoteq.com)

Elcoteq 1984-2004

- Electronics manufacturing services since 1984
- Management buyout in 1991
- Listed on the Helsinki Exchanges since 1997
- The largest European EMS company and 7th largest in the world
- Net sales: € 2 953 700 000 in 2004
- Number of employees: 20 000 (2005)
- Operations in 15 countries on four continents

(Source: Elcoteq Annual Report 2004)

¹ Based on the interview with the European Human Resource Manager

Net Sales by Geographical Area, % 2004	
Europe	63.5
Asia-Pacific	24.2
Americas	12.3

Net Sales by Business Area, % 2004	
Terminal Products	77.8
Communications	
Network Equipment	21.1
Other	1.1

Personnel by Geographical Area 2004	
Europe	10 008
Asia-Pacific	5 364
Americas	4 108

Source: Elcoteq Annual Report 2004

On the one hand, the company's 20-year history shows exceptionally rapid growth and internationalisation of production: within a decade, a company that started up as a small rural business was transformed into a global player. But in the last decade, on the other hand, globalisation has also resulted in the relocation of jobs, especially from Finland and other Western European countries, first to the new EU member states and now to Russia. Just to mention the latest news, published parallel to the conversion into an SE: the group sold one of its German plants in Überlingen, it opened a new production facility in St. Petersburg, Russia, and finally announced that 120 jobs in Finland would be affected by internal reorganisation.² The company's strategy obviously always includes an international dimension of restructuring, as is the case with all of its competitors in the industry, i.e. it is constantly seeking more economic production platforms in low-wage countries, in the proximity of customers. In addition to relocation, the company is using the 'posting of workers' as a flexibility tool to an increasing extent, not only in the case of managerial or expert staff, but also in the case of semi-skilled assembly workers, e.g. Hungarians are sent to Finnish or Estonian plants to work during seasonal peaks of market demand for the products of the plant in question.

As far as the emerging international division of labour is concerned, almost all of the company's R&D, process engineering, marketing, managerial and control units remained in Finland, while newly established units in the new member states were started purely as mass production platforms. The major units in Finland are the Group Office, Design Centres, and New Production Introduction (NPI) unit, although one plant has remained here in Sweden (Sales and Technical support). Germany seems to be an exceptional case with the production unit in Offenburg (specialising in Microwave Systems for Communication Network Equipment). As a result of the internationalisation of production, the workforce in Western Europe is increasingly composed of white-collar workers. The other side of the coin is that in Hungary, Estonia and Russia manual workers account for the vast majority of employment. For instance, in the Hungarian units there are roughly 500 white-collar employees and the plants provide work for almost 5 000 people. The share of units with higher value added is low in these countries, although there have been several new developments recently, such as the NPI unit in Estonia and the Engineer Service Centre in Hungary employing about 50.

Typical 'social dumping' charges against Elcoteq emerged in the Finnish and Estonian media, based on Finnish trade union sources, which did not complain directly about the relocation of jobs, but claimed that wages were low and working

² Source: www.elcoteq.com. [Elcoteq inaugurates the new St. Petersburg plant](#). Elcoteq SE Press Release 7 October 2005; [Elcoteq sells its Überlingen plant in Germany](#). Elcoteq SE Stock Exchange Release 31 December 2005; [Elcoteq to start personnel negotiations concerning roughly 120 employees in Finland](#). Elcoteq SE Stock Exchange Release 8 March 2006; (Source: www.elcoteq.com)

conditions poor in the Estonian plant. Although the company rejects these claims³, relocation, needless to say, hit mainly the Finnish workforce hard. It can therefore be assumed that relocation is a major concern for Finnish trade unions, and this is obviously what is at stake when Finnish employee representatives are in a position to negotiate on the company's the global strategy, which is the case in the would-be Representative Body in the SE.

As for Hungary, the clear-cut separation of the above-mentioned company functions has been somewhat relaxed with the current organisational changes parallel to the transformation to SE. Elcoteq has recently set up a European Centre in Budapest, in the geographic centre of the region, in which the major European customers are located. Obviously, a further advantage of this location is that the biggest European plant is located in Pécs, Hungary, 200 km from the capital. The current 8-strong staff has brought together various functional managers from different countries dealing with coordination issues at the European level. For instance, the newly established position for European Human Resources Director has also been located here; it is the same person who will very probably be in charge of organising the activities related to the newly formed Representative Body of the SE. Interestingly, for practical reasons the entire staff of the Centre is currently employed by the Hungarian plant.

On the other hand, Hungarian employee representatives are also concerned about the possible relocation of jobs. In public discussions in the country, relocation is perceived as a growing danger for jobs in low-skill-low-wage industries, since with growing wages (and unit labour costs) many multinational companies, especially those in clothing, footwear and electronics manufacturing, have already moved jobs from Hungary, primarily into the adjoining lower-wage candidate countries, Romania, Ukraine and even to China. Although Elcoteq's Hungarian subsidiary seems to be stable for the next few years due to its position on the European market, Hungarians already realise that only a sort of upgrading of production through workforce retraining can ensure the long-term viability of jobs.

2.2 Administrative structure

General meeting

The general meeting of shareholders is the supreme decision-making body in Elcoteq and the forum in which its shareholders exercise their voting rights.

³ "Certain media in Finland and Estonia have recently claimed repeatedly that workers at Elcoteq Network Corporation's manufacturing plants in Tallinn, Estonia, are paid low wages and are required to work long hours. The media in question support these claims by quoting expert opinions. For example, in an article published in Helsingin Sanomat on 11 March 2005, Pekka Sivill, the Regional Secretary of the Finnish Metalworkers' Union, claimed that "the wages paid by Elcoteq in Estonia are substantially lower than the average wage and lower than the wages paid in other similar companies." ... (The) Board has asked its Review Committee to establish if there are any grounds for these claims. The Review Committee has received a report detailing the salaries and working hours of the personnel in question and this report has been further audited by the company's auditors, KPMG. Having examined this report and heard the auditors' opinion, the Board of Directors states that the claims expressed in the media concerning the wages and working hours at the Tallinn plants are without foundation and categorically false." Elcoteq corrects false media claims about the company. Elcoteq Network Corporation Stock Exchange Release, 19 May 2005.

Group structure

In addition to the general meeting of shareholders, the principal responsibility for the company's administration and operations lies with the Board of Directors (a one-tier structure) and the President and CEO, the latter being supported in his work by a Management Team and a Management Conference.

In Elcoteq's Board of Directors the influence of shareholders is decisive, since it consists of three shareholders (including the principal shareholder) and four independent members. Managers are excluded, on the other hand – not even the CEO is a member of this supreme body of corporate governance. It is a peculiarity of the ownership structure that, although the company is listed on the stock exchange, the majority of the shares are held by one person sitting on the Board.⁴ This ownership structure makes Elcoteq very special, but there are several similar companies listed on the Finnish stock exchange.

The Elcoteq Group's top management consists of the President and CEO, the COO (Deputy CEO), and the members of the Management Team and Management Conference. Since 1 January 2004, Mr. Jouni Hartikainen has been the President and CEO of the company, and Mr. Jukka Jäämaa has been the COO and Deputy CEO.

The Management Team meets once a month. Its main tasks are to formulate strategy and to assure and monitor the company's financial performance.

The company also has a Management Conference, which consists of 11 key senior managers of the Group in addition to the Management Team. The Management Conference convenes 3 or 4 times a year at the discretion of the President and CEO. (Source: www.elcoteq.com)

⁴ The composition of the Board of Directors is as follows:

- President Martti Ahtisaari;
- Mr Heikki Horstia, Vice President, Treasurer, Wärtsilä Corporation;
- Dr Eero Kasanen, Rector of the Helsinki School of Economics;
- Mr Antti Piippo, principal owner and founder-shareholder of Elcoteq SE;
- Mr Henry Sjöman, founder-shareholder of Elcoteq SE;
- Mr Juha Toivola, MSc,
- Mr Jorma Vanhanen, founder-shareholder of Elcoteq SE.

Ahtisaari, Horstia, Kasanen and Toivola are independent Board members, and they make up more than half of the Board's members. (www.Elacoteq.com)

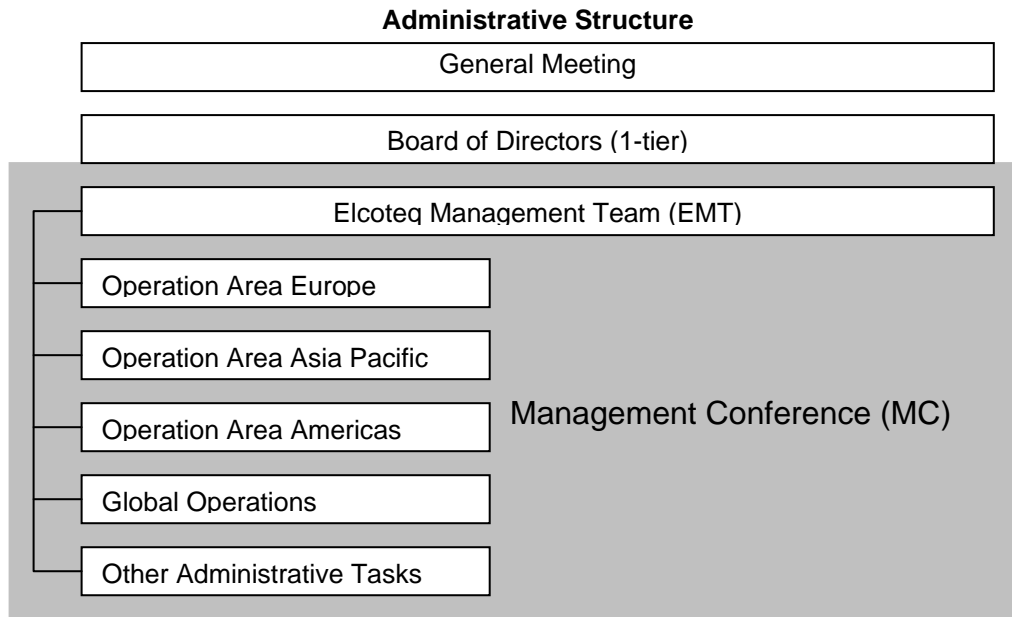


Diagram: Administrative structure of Elcoteq
 Source: www.elcoteq.fi

2.3 Business areas

Elcoteq focuses on communications technology products and customers and has organised its operations into two business areas: 1) Terminal Products, and 2) Communications Network Equipment. In addition to these, the company has three geographical areas: Europe, Asia-Pacific and the Americas.

Terminal Products

The Terminal Products business area manufactures high-volume products in wireless communications technology. These products are manufactured at Elcoteq's high-volume plants in Europe, Asia and the Americas, and most are marketed globally.

The product groups of Terminal Products are

- mobile phones and accessories
- Smart phones, PDAs and accessories
- wireless modules
- home communication products.

Terminal Product services

Terminal Products provides services ranging from design, new product introduction and manufacturing to repair. The customers of Elcoteq services are product companies or brand owners. In after-sales services, customers also include network operators.

Elcoteq Design Center offers:

- Complete and partial product design
- Software design, and

- Product verification services.

Elcoteq's aim is to participate in its customers' projects right from the product design stage and thus to offer them a competitive and comprehensive portfolio of services from design to after-sales. The earlier Elcoteq is involved in a project, the more likely Elcoteq will also be contracted also to manufacture the product.

Communication Network Equipment

Communication Network Equipment specialises in offering manufacturing services for complex telecommunication products, such as:

- high-density digital switching card assemblies
- 3G base station radio frequency modules – such as amplifiers, filters and radios
- microwave radios and complete microwave systems
- cabinet pre-assemblies.

Its largest customers are Ericsson, Nokia Networks, Siemens, Marconi, Powerwave, and Andrew Corporation.

2.4 Geographical areas and international affiliates

The Elcoteq operative structure is divided into three geographical areas, which are Europe, Asia-Pacific and the Americas. Europe is the largest of Elcoteq's geographical areas. Elcoteq has many plants, new product introduction centres and other offices in the area. The net sales of Geographical Area Europe in 2004 totalled € 1 875 million.

Locations in Europe:

EU Countries	Locations	Number of employees (8 Oct. 2004)
Finland:	Espoo, Lohja, Salo, Turku	861
Sweden:	Kista	7
Estonia:	Tallinn	3342
Hungary:	Pécs, Budapest	2692
Germany:	Offenburg	548

Source: Elcoteq Corporate Responsibility and www.elcoteq.com

Non-EU countries	Locations	Number of Employees (2003)
Russia:	St. Petersburg	190
Switzerland:	Zug	243

Source: Elcoteq Corporate Responsibility and www.elcoteq.com

It is worth mentioning that the Hungarian plant is the biggest in Europe, providing employment for more than 5 000 workers. This figure includes both the 2,700-strong staff of direct employees and roughly the same number of temporary agency workers (TAWs). Adapting capacity to fluctuating demand has always been an important requirement at this plant. In the 1990s, mass redundancies occurred when demand shrank (e.g. there was major collective redundancy at Pécs when Ericsson withdrew

from mobile phone production in 2000). Subsequently, when the new legislation entered into effect in 2001, the company preferred TAWs and flexible working time arrangements to external numerical flexibility. Due to the highly seasonal demand for mobile phones, the range of fluctuating need for employees amounts to 1000 workers in a year. In the Hungarian context, however, TAWs do not always mean short-term employment. At Elcoteq a large pool of agency workers has also been employed for years, and workers can change their employer without actually changing their job, from Elcoteq to an agency, or vice versa.

Locations in the Americas: Mexico, USA, Brazil. The net sales of Geographical Area Americas totalled €365 in 2004.

Locations in Asia-Pacific: China, India, Japan, South Korea. The net sales of Geographical Area Asia-Pacific totalled €714 million in 2004.

3 The reasons for and strategic aims of the Elcoteq SE conversion

“Since Elcoteq operates in the low-margin electronics manufacturing services business, it is essential that we consider the different levels of taxation in force around Europe.” (Elcoteq chairman Antti Piippo at EGM 17 Dec. 2003)

At the Elcoteq Annual General Meeting in March 2003 the Board of Directors and CEO were given the task of assessing whether the company would gain any benefit by changing the locations of its share listing, management or company domicile. A number of experts contributed to this work. “Elcoteq needs to consider where its various operations are located with this perspective in mind,” said Chairman Antti Piippo at the EGM in December 2003.

“One result of our assessment was the decision to examine the suitability of the European Company form for Elcoteq. If implemented, this change would emphasise the international nature of our operations and strengthen our European identity,” noted Elcoteq's chairman, Antti Piippo. “SEs will find it easier, for example, to manage cross-border acquisitions and divestments, and to choose their place of domicile within Europe.”

At the EGM in December 2003 the company started preparations leading to a shareholders' meeting to consider changing Elcoteq into a European Company, or Societas Europaea (SE).

(Source: Elcoteq Stock Exchange Release. 18 December 2003)

Why convert Elcoteq into an SE?

To increase Elcoteq's global competitiveness and part of the company's internationalisation strategy

Elcoteq's internationalisation strategy is supported by the establishment of new offices close to the end markets of customers' products. Over the past year the company has started up manufacturing plants in Brazil and India as well as setting up a new international office in Zug, Switzerland, and a European office for Geographical Area Europe in Budapest, Hungary. The company's new manufacturing plant in St. Petersburg, Russia, was inaugurated on 7 October 2005. (Source: www.elcoteq.fi)

"Elcoteq wishes to be among the first companies to exploit the benefits of conversion into a European Company. This will support our reputation as a pioneer and globally operating company, as well as creating greater international visibility both in Europe and elsewhere in the world. While respecting its Finnish roots, the company wishes to forge a clear European identity for itself," said Jouni Hartikainen, President and CEO. (Source: Proposal by the Board of Directors on conversion into a European Company, Elcoteq press release, 8 October 2004)

European identity

A strong pan-European identity is attached to the form of European company. A European company is a “European-level public limited-liability company” as opposed to “national” public limited-liability companies, which are directly based only on national laws.

Of the largest international corporations in Elcoteq’s business sector, Elcoteq is the only European one – the others being numerous American companies and one Asian company.

Elcoteq wants a clear European identity, but without forgetting the Company’s Finnish roots. A European company, as a form of incorporation, is easier to identify and accept throughout Europe than national forms of company incorporation. A European company also has a certain European guarantee with regard to the level of employee involvement. Source: www.elcoteq.fi

Elcoteq is the first major European industrial company to become a European Company. Becoming a European Company will also mean a new name for the company, Elcoteq SE. (Source: Elcoteq Press Release, 28 September 2005)

Facilitates cross-border mergers

An SE will be able to merge its subsidiaries throughout the 28 countries of the European Economic Area (EEA), generating savings in administrative costs and making decision-making processes faster and more efficient. The SE form of a company will also make it more flexible for implementing cross-border mergers, acquisitions and divestments, and for registering the company in a new country. Elcoteq believes that the SE form of a company will also have a positive effect on its image and will thus support its business operations. Source: www.elcoteq.fi

Uniform company structure within the EEA possible

In the longer term the SE form of company will allow a single corporate structure throughout the 28 countries of the European Economic Area (EEA) instead of having several separate subsidiary legal entities as at present. This will generate savings in administrative costs as well as making decision-making processes faster and more efficient.

Makes it possible to change domicile within the EEA without dissolving the company

A European company can change its domicile within the EEA by decision of a shareholders’ meeting without having to dissolve the company. This option creates flexibility in the future, should the focus of the company’s operations shift and the location of the company’s domicile need to be reviewed afresh. (Source: Report by the Board of Directors on converting Elcoteq into a European Company)

At the Annual General Meeting in 2003, the Board of Directors and the CEO were assigned the task of establishing whether the company could gain any advantage if its place of listing, the location of its head office or the company's domicile were to be elsewhere than in Finland. This work is continuing. (Source: EGM, Elcoteq Stock Exchange Release, 27 September 2005)⁴ The Elcoteq conversion process and organisation of employee involvement

The legislation on European companies in Finland is supplemented by the Act on the European Company, most of whose provisions correspond with the regulations for public limited liability companies.

The rights of employees to receive information and to be involved in the affairs of a European company are laid down in Council Directive (EC) 86/2001, which has been embodied in Finnish law in the Act on Employee Involvement in a European Company 13.8.2004/758.

Elcoteq has chosen the legislative option of conversion into a European company. An existing Finnish public limited liability company can convert into a European company if its statutory domicile and head office are located in an EEA country and if it has had a subsidiary for at least two years that is governed by the law of another member state. Elcoteq's domicile and head office are located in Finland. Elcoteq has owned the entire capital stock of

- 1 Elcoteq Elektronik GmbH,
- 2 Elcoteq Deutschland GmbH,
- 3 Elcoteq Sweden AB,
- 4 AS Elcoteq Tallinn and
- 5 Elcoteq Hungary Ltd,

for at least two years.

Elcoteq Network Corporation (OYj) → Elcoteq SE

In Elcoteq's case, forming a European company with the name of "Elcoteq SE" meant that Elcoteq chose the "transformation" (conversion) method of forming a European company, rather than a merger or establishing a new company. As a result of this decision, all subsidiaries in the various European countries remained the same companies as they were before, becoming the subsidiaries of Elcoteq Network SE. On the other hand, this decision left all economic transactions of the subsidiaries intact; they continued to operate within the scope of the respective national laws in terms of employment relationships, trade contracts, national and local taxation, social security, etc. In other words, the company deliberately refrained from making immediate use of the potential economic advantages of forming a European entity. As will be presented later in detail, this was a gradualist company strategy aiming to minimise the risk presented by the still imperfect national legislation in various fields.

Due to the above-mentioned decision Elcoteq was legally the only "founding company" in the formation of the European Company. Consequently only the level of involvement in the founding company, Elcoteq Network Oyj, was taken into account when it was decided whether there was involvement in the company or not. The subsidiaries of Elcoteq within the EU were involved in the process of conversion so that workforce involvement could be negotiated.

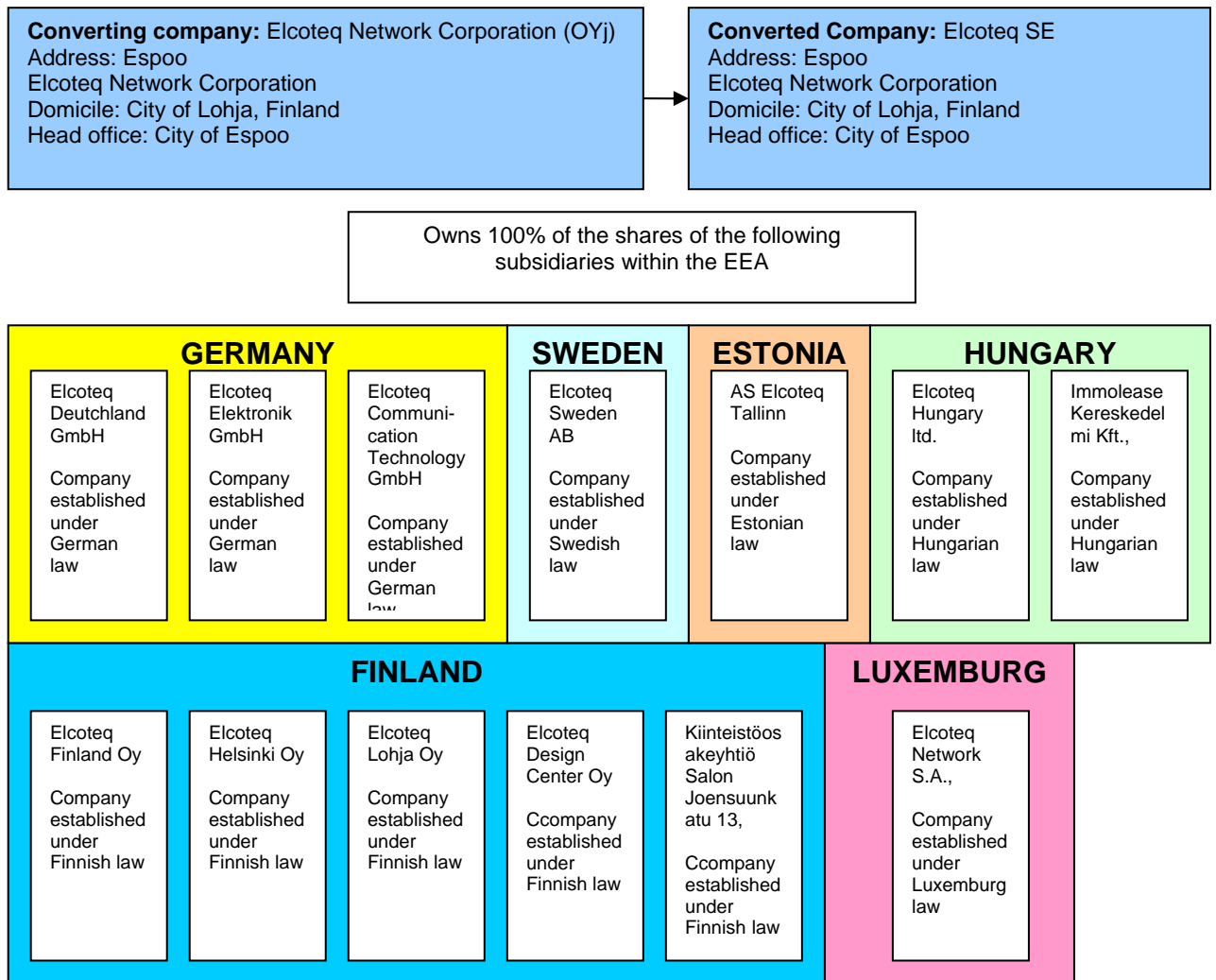


Diagram: The Converting Company (Elcoteq Network Corporation, now Elcoteq SE) and its subsidiaries involved in the conversion. “Elcoteq Network Corporation” was the only company that converted to Elcoteq SE. All subsidiaries of the parent company Elcoteq retained the same legal status after the conversion. In organising employee involvement at the European level, only the level of involvement in the parent company was considered, due to the legislative stipulation that the level of involvement in the participating company is to be considered if there is participation, information or consultation in the company (in this case there was only one participating company, in contrast to a merger or other type of formation).

Who will be represented?

Elcoteq Network Corporation’s employees in subsidiaries in member states of the European Union will be represented in the special negotiating body. Members of the body will be elected or appointed in proportion to the number of employees in the companies and offices of each member state; for each member state a seat for one member is allocated for each part of the personnel working in that member state that represents ten percent, or a part thereof, of the total number of employees in all participating companies and relevant subsidiaries and offices when employees in all member states are totalled.

The composition of the SNB

Elcoteq's special negotiating body is composed of 13 members, as follows: 2 members from Finland, 1 member from Sweden, 5 from Estonia, 4 from Hungary and 1 from Germany. This distribution is based on the situation on 8 October 2004.

Country	Employees	Proportion	Legal entities	Representatives
Finland	861	11.557%	5	2
Sweden	7	0.094%	1	1
Germany	548	7.356%	3	1
Estonia	3 342	44.859%	1	5
Hungary	2 692	36.134%	2	4
Total	7 450	100%	12	13

Composition of the SNB – Headcount 8 October 2004

Source: Minna Aila Presentation 8 February 2006

As was mentioned above, employees working in the Hungarian plants outnumber direct employees. As the legislation clearly refers to 'employees', the Hungarian SNB members did not even raise the claim for TAWs to be taken into account when the seats in the bodies are distributed.

How are representatives appointed in each country?

The procedure for appointing or electing members is laid down in the national law on employee representation valid in each country.

Expert

For the purposes of the negotiations, the special negotiating body may ask experts of its choice, for example representatives of relevant Community-level trade unions, to assist it in its work. These experts can attend negotiation meetings as advisers at the request of the special negotiating body when this is necessary in order to promote uniformity and harmonisation at the Community level.

(Sources: Eurooppayhtiö 2005 and Report by the Board of Directors on converting Elcoteq Network into a European limited liability company)

5 The conversion process

The process of conversion can be illustrated by the following diagram prepared by the Elcoteq management.

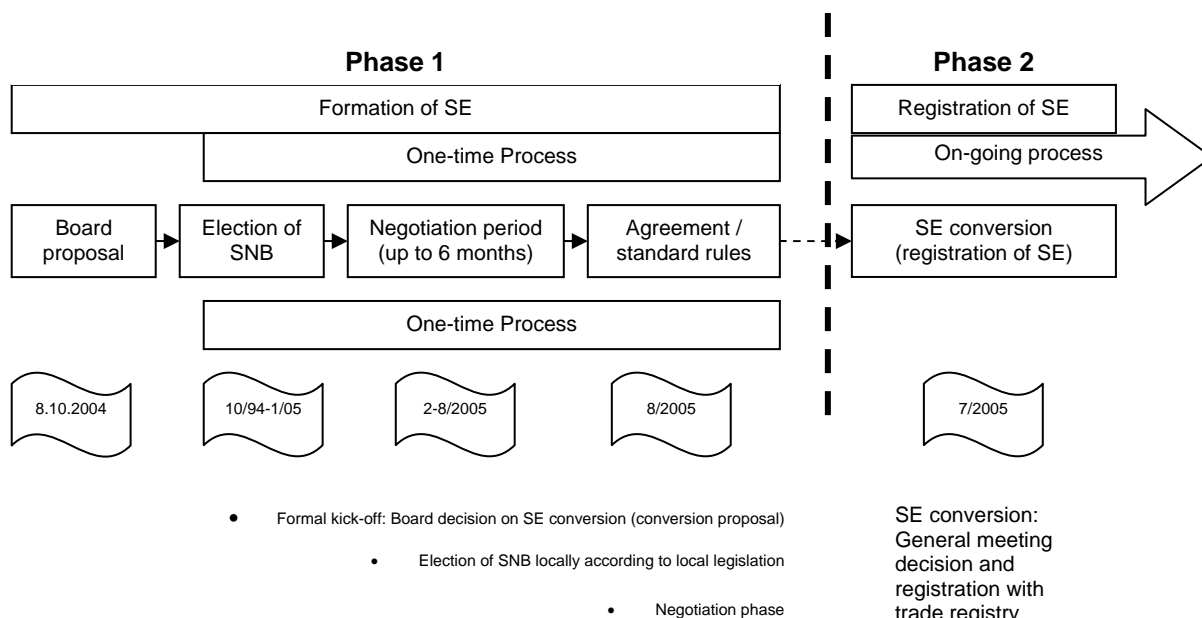


Diagram: Conversion Process. Source: Minna Aila Presentation 8 February 2006

Procedures

After approving the conversion plan the Board of Directors must implement all of the measures necessary for starting negotiations with the companies' employee representatives on the arrangements for employee involvement in the SE. The conversion plan was approved on 8 October 2004.

Negotiations must commence as soon as the special negotiating body has been formed and can continue for six months after that date. The negotiations began once all of the representatives had been elected in Elcoteq. The fact that they did not start until 24 February 2005 may have been due to lengthy election procedures in Estonia. (Source: Report by the board on Elcoteq conversion to an SE, 8 Oct. 2004)

Hungary transposed both the SE statute and the directive on employee participation in SEs in mid 2004, and the law came into force on 8 October 2004. As far as was possible, the legislation transposing the Directive followed the legal solutions elaborated earlier in the course of the transposition of the EWC directive.

What	When
The Board approved the conversion plan + report; documents registered with the trade registry	8.10.2004
The CEO started the procedure to nominate/elect members to the Special Negotiating Body, SNB	11.10.2004
SNB formation according to national laws	10/04-1/05
Negotiations commenced between Elcoteq and SNB.	2/2005
Negotiations concluded	8/2005
Statement of independent expert	8/2005
Extraordinary General Meeting	29.9.2005
Decisions registered – conversion completed and effective	1.10.2005

Timeline. Source: Minna Aila Presentation February 8 2006

6 Developments preceding Elcoteq conversion

6.1 The choice of conversion as the method of forming the company

Elcoteq chose conversion as the method of forming the SE company. "It was significant that this method of forming was chosen in that there was no knowledge of taxation consequences in the event of merger in 2004. Moreover, the other methods of formation are laborious. Conversion is also the easiest and fastest way of forming an SE company. It was the most purposeful for business operations. It did not make sense to merge the companies. Merger is also a very complex method of formation", said Project Director Minna Aila.

Did the lack of precedents affect the conversion work?

Elcoteq was the first company in Finland to convert into a European company. The management does not think that the lack of precedents made the conversion process more difficult, only slower. "There are no experts to advise us about these matters and tell us how to go about it. That's part of being a pioneer. I can't really say that it made it more difficult; it may well have slowed the process down and made our people think more about what was involved and how we should go about it," says Mr. Hartikainen.

"We had to do thorough background work, which we wouldn't have had to do if there had been some precedents. We wanted to be sure of all of the factors connected with the conversion in advance. We asked the Central Tax Office⁵ for a preliminary ruling stating that the conversion would not affect the taxation of the company or the shareholders of the company, and that was indeed the case. Also we had to go through various procedures at the trade registry. There were no models for the conversion plan or for the reports connected with it, so our report was the first of its kind. In that sense it meant that there was more work involved, since there were no precedents", says Ms. Aila.

How did employees perceive the aims of the company?

In reply to the question of what the company's objective was, the Hungarian SNB representatives said unanimously that it was mainly considerations of prestige or public relations that really mattered. "The company wanted to be the very first to convert into an SE; that is what the firm is really concerned about." This could have been a general conviction because the conversion would not have any immediate effect on the subsidiaries. Of course, the SNB members generally understood the reference to "European identity", but for them this was more palpable in connection with the new Budapest office.

The internal company procedures

The procedures involved in the preparation work prior to conversion were mainly internal. "It was mainly an internal process; external experts typically do not have any advice to give. External experts generally have done one case and then sell that knowledge further. In our case no one had done this before, so there weren't any external experts and it didn't make sense to use

⁵ Finnish: keskusverolautakunta

any,” says Mr. Hartikainen. The only case where external consultants were used was connected with the economic aspects, i.e. questions such as “Is this directive such that it is suitable for us?” and “Does it cause any difficulties or need for change?” Also when it came to auditing or external reporting as well as legal experts, what it would mean in each country, how it would be implemented – there was a need for external help with questions like that. Minna Aila, a legal expert, was in charge of conducting the conversion process.

The Elcoteq board issued the conversion plan and report in October 2004, detailing the various effects of the conversion. Following this negotiations were held with the employees. “Those are the requirements for registration”, says Ms Aila. The process required that the conversion plan and report documents be registered with the trade registry in Helsinki on two different occasions.

6.2 Applicable legislation

Since Elcoteq is a Finnish company, Finnish legislation applied automatically to the conversion process as well as the negotiation procedures. Legislative provisions should basically be the same in each EU country because they are based on the same directive.

Both the Regulation and the Directive were due to come into force on 8 October 2004, but only nine of the 28 states which should have transposed the Directive had in fact done so by that date (see Table 1). These were four Nordic states – Denmark, Iceland, Sweden and Finland, two of the new member states – Hungary and the Slovak Republic – and Austria, the UK and Belgium. (Fulton 2006)

Hungary	One single piece of legislation	24 May 2004
Finland	European Company	13 August 2004
	Employee involvement	13 August 2004
Sweden	European Company	10 June 2004
	Employee involvement	10 June 2004
Germany	One single piece of legislation	22 December 2004
Estonia	European Company	10 November 2004
	Employee involvement	12 January 2005

Source: Fulton (2006)

6.3 Employee involvement in Elcoteq before conversion

There were no other forms or levels of personnel involvement in Elcoteq other than the country’s internal arrangements. “The local management and local employees held reasonable dialogue with each other”, says Mr. Hartikainen. There were no continent-level dialogues before the conversion. Preparations had been made prior to establishing a European Works Council, but the plan was dropped because of the SE arrangements.

6.4 Employee involvement in European countries with Elcoteq subsidiaries

The arrangements provided by national law in each European country applied in each of Elcoteq's subsidiaries. In Finland there was no participation in the form of representation on the board in the parent company. According to Finnish legislation it is the employees' responsibility to require this arrangement, and it could have been requested because the workforce volume required for this arrangement had been exceeded in Finland. However, this request had not been made prior to the conversion arrangements.

In Hungary there is a dual workplace representation system; along with company trade unions all of the employees of the company/establishment are supposed to elect mandatory Works Councils where the number of employees exceeds 50, or a single representative with the same rights if the number of employees is between 15 and 49. Since both setups provide representation with certain (rather overlapping) rights to information and consultation, these bodies and the employer meet regularly. Collective bargaining, however, is the exclusive right of trade unions, which can conclude collective agreements with the employer at the company level as well as at multi-employer and sectoral level. Furthermore, employee representatives, delegated by the Works Council, make up at least one-third of the Supervisory Board if the company has more than 200 employees. The company governance structure is dualistic in Hungary; the Board of Directors takes the major decisions, while the Supervisory Board, acting on behalf of the shareholders, has a certain degree of control over the operational management.⁶

In Estonia there is a special form of employee involvement where elected members of the personnel and elected employer representatives meet in a "Work Environment Council", although there were no arrangements that would have affected the procedures when arranging the workforce involvement in the European Company.

Information

A great deal of internal company information is provided within Elcoteq in each country other than what is stipulated by law. The workforce in each subsidiary is informed about strategy and other matters. Recently the CEO has been visiting the different Elcoteq sites in person giving quarterly reports, inter alia. Furthermore, there are personnel magazines and other forms of communication within Elcoteq.

⁶ For further details see: PRESENS publication:

http://www.seeurope-network.org/homepages/seeurope/file_uploads/booklet_summaries_nms_english3.pdf

However, the 2006 legislation introduced the option of the two-tier system and somewhat deregulated board-level representation, as a repercussion of SE legislation. See in detail: László Neumann: Employee board representation in Hungary's new company law.

http://www.seeurope-network.org/homepages/seeurope/file_uploads/hungary_changesincompanylaw112006final.pdf

Consultation

Communication is arranged locally in each country. In Finland there are what are known as participation⁷ meetings, which are based on legislation and where shop stewards⁸ and local management meet.

Board-level representation and participation

These depend on local traditions of cooperation. In the Elcoteq parent company in Finland there was no representation on the board or any supervisory organ. The Finnish system is largely based on a one-tier system where there is only one board of directors and no other body. In state-owned companies there is usually participation on the board. The Stockmann chain store is probably the only listed company with a two-tier system and participation. In state-owned companies such as the Outokumpu mining company and the Metso mechanical engineering company, participation is organised at board level. It is very common, however, for participation to be organised at the operational management level in Finnish companies.

In Hungary there is a two-tier system where there has been participation in the supervisory organ of the board. "What I learnt about Hungary is that they have cooperation arrangements that are as good as, if not better than, those in Finland. They have a lot of representatives who have very good participation rights," says Roni Jokinen, the expert and trade union representative in the negotiations.

In Sweden there are seven people involved; everybody knows each other there, so workforce involvement does not need to be organised specifically.

In Germany there is the Betriebsrat. However in the case of Elcoteq, the Betriebsrat was not represented on the supervisory board because there were too few people there for this arrangement. In Germany the company has to employ at least 500 people in order for this to be required.

Employee participation in Finland

The Finnish system for workforce involvement with regard to information and consultation is laid down in the Finnish legislation on cooperation, the Cooperation within Undertakings Act⁹. Participation in administration, at both the operational and the board level is laid down in the Act on the Administrative Representation of Personnel¹⁰.

The trade unions are relatively strong in Finland. The membership rate in employees' trade unions is fairly high. The trade unions have a long tradition in Finland, and the legislation in force has been established partly through their work.

⁷ In Finnish these are commonly called "yty and jyty" meetings based on the abbreviation of the corresponding legislation.

⁸ Shop steward refers to the employee representative in the Finnish system. Finnish: luottamusmies.

⁹ Yhteistoimintalaki 'YT-laki' (725/1978)

¹⁰ Laki henkilöstön edustuksesta yritysten hallinnossa 24.8.1990/725

The basic system in Finland

Workers in different industries and from different educational backgrounds are organised in different trade unions. There are different trade unions for workers and salaried employees and salaried employees with higher education. Workers are also organised in different central organisations.

Blue-collar trade unions cooperate with one another in various negotiation bodies and through the Central Organisation of Finnish Trade Unions – SAK. The white-collar workers' central organisation is the STTK, and the Akava is the central organisation for academics. Of the 840 employees in the Finnish subsidiaries of Elcoteq approximately ¼ were white-collar workers, 3/8 were employees with an academic background and 3/8 were blue-collar workers, all of whom worked in the Lohja factory.

In Finnish companies the system for information and consultation according to the Cooperation Within Undertakings Act is clearly linked to the collective bargaining system and representation by trade union shop stewards. In the companies the personnel elect their representatives amongst themselves to represent them in negotiations with the employer only where there are no representatives according to the collective bargaining system. Otherwise these shop stewards also participate in the information and consultation procedures. The shop stewards also have deputies. The employee representatives meet with the employer each month to discuss the issues mentioned in the Finnish cooperation legislation, including the work environment, changes at the workplace, etc. "We have close cooperation with the employer here at Elcoteq; we meet regularly each month," one Finnish employee representative said. The monthly meetings are very informal; there is a theme for each meeting and if changes are been made in the company they are announced at these meetings. Both serious and less serious issues are discussed at these meetings. The different groups of employees belonging to different trade unions are all represented by their own delegates.

In Elcoteq all the employee representatives in the Finnish units meet with the parent company management each year to discuss developments in the company and what the future holds for it. "All Elcoteq employee representatives from the Finnish units meet once a year with the CEO and personnel managers to discuss current affairs and what the future will hold", one Finnish employee representative said. In this annual meeting employees can ask the CEO questions about various issues.

Employee involvement in Estonia

The situation and tradition of employee involvement in Estonia is different from those of Elcoteq subsidiaries in other EU countries. The role of trade unions in Estonia is closely linked with its history. Trade unions still lack legitimacy to some extent due to their history. Only 3.33% of Elcoteq employees are trade union members.

There are two pieces of legislation governing the election of representatives and their rights. One is the law on trade unions and the other is the law on the election of representatives.

There is legislation on voting procedures for electing SNB members and RB members. Anyone can stand as a candidate to represent the personnel. When elections were held at Elcoteq, signatures from 10 co-workers were

required in order to stand as a candidate. Before the elections a vote was held on the approval or rejection of the procedures for the forthcoming elections.

Estonia has legislation governing trade unions as well as legislation governing the work of a special employer-employee negotiating body, the “work environment council”.

The work environment council

The work environment council is the primary body where work-related issues are discussed in Elcoteq’s Estonian subsidiary. It is the primary body where issues regarding the working environment, such as health and safety, are discussed. The various matters concerning employee involvement are also discussed in this body. If any questions are raised amongst the personnel they go through this body.

The council is composed of an equal number of employer and employee representatives. In Elcoteq there are seven employee representatives and seven employer representatives. Each representative holds one vote. The employee representatives are elected in a general election amongst the workforce. Every employee is entitled to stand a candidate. The employer elects seven management representatives.

The work environment council convenes regularly every month and even more often if necessary. In addition to the official agenda members can each bring matters of their own for discussion. At the meetings a discussion is held on the subjects agreed at the last session, the progress made in the on-going work, and what is to be done in the future. The subjects discussed include work-related accidents, etc.

The work environment council has the possibility of using external experts, although this has not proved necessary so far. “The Estonian authorities check very closely that we are acting according to legislation”, says Elcoteq Estonia Personnel Manager Agnes Hansen.

Information

The general information provided by the employer works the same way in Estonia as in other countries. There are company intranets for those who have access to computers, there are production meetings, and there are notice boards as well as an internal company magazine. “I think communication is very good in Elcoteq today. For example, there was a live broadcast from the CEO in Finland and everybody who was interested could watch it. We always receive information through e-mails and so on, and we can read about all important issues in the company magazine,” says one employee representative.

The trade union

The trade union has its own support group, which backs up its work as well as legislation governing its work. Since the trade union is rather weak it is not very influential.

6.5 Employee involvement in Elcoteq's Hungarian subsidiaries

Trade union and collective agreement

Elcoteq employees are represented by one single trade union, which belongs to the Metal Workers' Federation (Vasasszakszervezet), the secretary of which was elected Vice-President of the Federation in 2004. Elcoteq's Hungarian subsidiary was started up as a green field investment in 1998, and by the end of that year the local trade union was organised. Another local trade union was also established at the Nokia-EMS plant in 1998 – independently from the other plant. When the two plants were merged in 2000, both companies had already had well-run trade unions and works councils for 2 years. Since the merger of the two company unions there has been a continuous drive to organise workers. As the result of a dedicated recruitment campaign in 2000, there were as many as 847 trade union members on 1 January 2005. The trade union uses company leisure events to build up membership and has also managed to have the practice of offering a 1-hour information session about the trade union for newly hired workers on their first day of training included in the collective agreement. It is worth mentioning that such a stipulation is exceptional in the Hungarian context. Despite all these efforts, the difficulty in the employee representation field in the Hungarian subsidiary is the low union density (33%), even if it is considerably higher than the national average (17% in 2004).

The membership consists mainly of blue-collar workers because white-collar workers are difficult to unionise at Elcoteq, as is the case in Hungary in general. Besides the trade union's everyday activities such as organising sports and leisure events, it has made major achievements in the area of wages and job security. The trade union played an important role in the redundancy procedures in 2001, when a dismissal committee was established with the participation of the unionists and the works council members. For example, the company provided financial support for training for redundant employees, and as soon as production restarted in 2002, some of the employees previously laid off were contacted on the basis of the company's register and were re-employed.

The company collective agreement is renegotiated annually. Its content is quite well elaborated. Besides wages, it includes many terms that are more favourable for employees than general Labour Code stipulations, and it also regulates many issues which are not dealt with in the Labour Code. Generally speaking, the collective agreement stipulates fairly high wages compared to the local labour market and valuable company welfare provisions and also provides employees with other forms of protection. As a trade-off the collective agreement also includes stipulations which are favourable for the employer, such as those encouraging the flexible use of working time in the company. As for wage negotiations 2000 was a year of challenges. The wage level of the two merged companies had to be harmonised since basic wages were substantially higher in the former Nokia-EMS plant than in Elcoteq, and the wage structures were also different. The process took 2 years. This year the new law requiring equal wages and benefits for TAWs is a challenge for the wage bargaining round.

The drawback of collective bargaining is that agency workers are not covered by the company agreement and there is no sectoral agreement within the electronic manufacturing industry. (It should be noted that the Hungarian electronics industry consists of about 40 different companies, mainly subsidiaries of multinationals.¹¹)

¹¹ For an overview see: http://www.itd.hu/itdh/static/uploaded/document/hungary-electronics_en.pdf

In terms of international contacts, the trade union is relatively well placed. It is a member of the Information and Communication Committee of the European Metalworkers' Federation (EMF). International relations are rather difficult, however, since none of the representatives speaks English fluently.

Works council and supervisory board members

The first works council was established at Elcoteq with 9 members in May 1999, and after the merger it was enlarged to 13 members through new elections in 2001. Each of the 13 members of the WC is also a trade union member. Although there is a significant overlap between the trade union body and the members of WC, the two bodies work independently, except for information and communication.

The WC is primarily responsible for making and implementing decisions on the distribution of the company welfare fund. It has extended the services every year in the area of sports (squash, swimming-pool, tennis, ball games, fitness room), recreation (massage, organised holidays, sauna, excursions) and financial support (schooling allowances, funeral aid, extraordinary aid for employees in need). In addition, it keeps track of fringe benefits.

The WC organises regular – biannual – professional training sessions for the WC and trade union officials. The WC's role is not confined to the company: it has been coordinating the activities of regional and national clubs for WC presidents since 2000, and has been organising regular meetings.

In Elcoteq Hungary a 5-member Supervisory Board was registered at the court on 1 January 2000. The Board comprises 3 management delegates and 2 employee members delegated by the WC through internal elections.

Representation policy in Hungary

The parties consider that the relationship between the WC, the trade union and the management is definitely good and co-operative, while the industrial relations system can be considered outstanding in the Hungarian subsidiary. It is mainly because this relationship is based on the Finnish model that it is so exemplary. There are regular quarterly meetings with the managing director of the Hungarian subsidiary, in which the representatives are given information about the business. The parties seem to be cooperating to the full even in cases of dismissals and wage negotiations. The managing director and the HR managers negotiate wages jointly with the trade union and the WC; this can sometimes take several months, however.

The local trade union and the works council work together in close cooperation and provide employees with relatively effective representation by Hungarian standards. Over and above the collective agreement there is a separate agreement on how the company supports employee representation, which includes higher than average wages for full-time representatives. Representatives are in turn involved in the company's discipline procedures; the committee adjudicating the individual cases includes line managers, HR managers and one employee representative.

As far as the style of representation is concerned, the Hungarian union and works council's policy prefers day-to-day cooperation with the management to formal negotiations and relies strongly on mutual trust and personal communication.

The level of involvement in different countries

“The arrangements in Finland, Germany, Hungary and Sweden have many commonalities in personnel arrangements. They have clear representative systems where the employees select their own representatives who act on their behalf in relations with the company. Estonia is a case apart owing to the fact that worker organisation level is very low. The employer does not have an organised counterpart in Estonia”, says Mr. Jokinen, the SNB expert.

6.6 Employer procedures prior to SNB negotiations

“I think we did a thorough job on this”, says Ms Aila, commenting on how the personnel was informed on the need to form a Special Negotiating Body and the purpose and subject matter they were asked to take into account. The whole workforce was informed as soon as the Board had published the conversion plan. The personnel managers invited the employee representatives to a meeting, and they were given the information package on what a European Company is and on the background to the company’s decision to convert. The information package contained information about the conversion process and how choices were made. It was explained that the issues involved in the process were laid down by law.

The information package was translated into all relevant languages and meetings were held in Finland with all representatives, at which they were informed about what the process involved. The personnel representatives, labour protection supervisors¹² and the Elcoteq labour protection representative¹³ were present at the meetings. They were told that if they felt that they needed more detailed information or education this could be organised. In each country the personnel were instructed as to how to act in these situations.

Estonia was a special case because there were elections to be held. The case of Estonia was very different from the other states because the legislation for electing employee representatives came into force only 3 months prior to the first SNB meeting, and it was not until the legislation was in effect that work could proceed on the forthcoming procedures. The whole process from voting on the procedures for the forthcoming election to the nomination of candidates for that election and the election of the final representatives and consequently the education of the representatives had to take place within those 3 months.

In countries other than Estonia the personnel representatives elected the SNB representative amongst themselves. In each country the relevant legislation was explained to the representatives. The employer was actually very much involved in the practical arrangements.

The employee representatives did not participate in the preparations for the Elcoteq conversion, but the personnel were informed of the relevant preparations.

¹² Työsuojeluasiamies

¹³ Työsuojeluvalltuutettu

6.7 Employer procedures in Finland

The personnel managers in Finland became involved at the SNB stage, although their role was very limited. "It was a practical job; we were involved in the SNB negotiations and took care of the practical matters related to the negotiations such as interpretation, etc. I think it was interesting that we were the first to make this arrangement", says one Finnish personnel manager.

The preparations prior to the SNB meetings included the elections of the representatives, and the employer also informed the personnel to some extent. "There are pretty precise rules about how the personnel is to be informed. We informed the personnel as soon as the representatives were chosen," says Ms Virtanen.

6.8 Employee procedures in Finland

In the course of the year prior to the introduction of the SE conversion plan there was a request from the Finnish and German personnel for the establishment of a European Works Council in Elcoteq. This arrangement was subsequently replaced by the RB arrangements connected with the SE conversion.

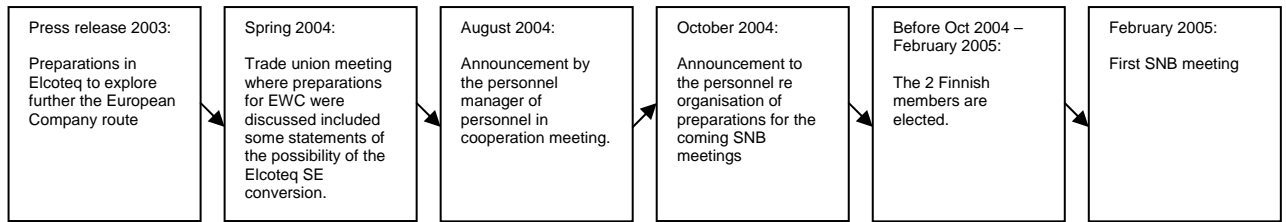
Information

The first information on the forthcoming conversion plan was received by the employees at the cooperation meeting from the personnel manager in August 2004 before the stock exchange release, and it was stated that all of the arrangements would be put forward once the legislation came into force. The personnel representatives were told that they should prepare themselves for these arrangements. Towards October 2004 things were happening quickly and it was asked who would represent the employees in the SNB. Anyone who wished could stand for election as a representative in the forthcoming SNB negotiations. In Finland these representatives were elected amongst the existing personnel representatives. The composition¹⁴ of the team was then decided.

"I became aware that the personnel would be involved in the SE procedures in the spring of 2004," one representative said, "at a meeting held with a metal worker union representative who was acquainted with EWC matters and who told me that if the SE was not implemented then EWC arrangements would be put forward."

"We received a letter from the CEO about the coming SNB meeting in February 2005," said another representative. "The first information we received from the employer was through an e-mail where the first meeting was announced and the negotiation procedures were presented."

¹⁴ The Composition of the Finnish SNB team was Ira Laitakari-Svärd, an industrial designer and Master of Arts. She represented the salaried employees with higher education. The other Finnish representative is Merja Levonmäki, who is in charge of claims connected with the products manufactured. She is a trained laboratory assistant and is a deputy employee representative. She has been involved in trade union work for over ten years.



Timeline: How the Finnish members gained information about the coming SE conversion and its implications for workforce involvement.

Election of representatives

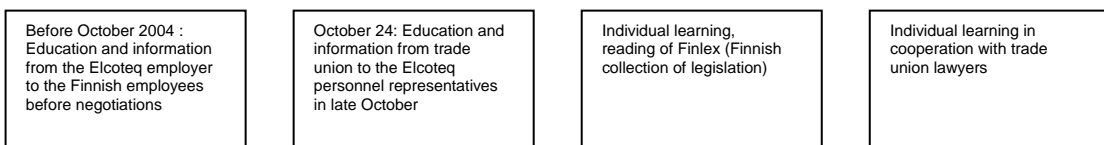
The employee representatives convened and elected two people amongst themselves.

Education

The trade unions went into action when they received the information and organised education for the employee representatives.

It was announced at one point that an information and education meeting would be arranged. The employee representatives received information and education from the employer. At the trade union level all of the employee representatives received education, after which the employee representatives were elected. “There were a lot of questions and no answers,” one employee representative said. The trade union provided the employees with support, and this was the beginning of cooperation between trade union and employee representation.

A legal expert, Mikaela Karavokyros, from the Finnish Association of Graduate Engineers TEK¹⁵, was involved in the employee preparations. As one employee representative commented, “This would not have worked if we hadn’t received support from a lawyer; it was such a major process that it cost the lawyers a lot of their time, too.”



Education on the forthcoming workforce involvement in Finland: collective education provided by the employer for all employee representatives in Finland, collective education through the trade union for all employee representatives in Finland, individual learning, and learning in collaboration with the trade union.

Knowledge level – Finland

The employee knowledge level concerning the first SNB meeting was inadequate. “It required a lot of work. At first one really didn’t know anything. Then one received education and one felt even more stupid than before. There was not enough information or understanding even for the first SNB meeting,” one representative said.

¹⁵ Teknisten akateemisten liitto

“This was largely driven by Finnish efforts to begin with,” says an employee representative. “We were the only ones who had prepared for it. The Hungarians didn’t even have the first draft agreement translated into their language by the employer.” And another representative stated that some of the representatives were only prepared on the actual day of the first SNB meeting.

6.9 Employer procedures in Estonia

The situation in Estonia differed from the circumstances in other countries in many regards. In the autumn when the directive had to be implemented at the national level, Estonian legislation had not yet been adopted. It was not until the Estonian legislation came into force that people could know how to go about the various procedures for electing the representatives. The Estonian management gave the employees all the information they could prior to the enactment of the Estonian legislation. Once the legislation came into force in December 2004 the procedures for electing representatives were commenced as laid down in the legislation. The final election of the SNB representatives took place only a short time before the first SNB meeting.

“We were lucky in that regard; when the legislation came into force so late we nevertheless managed to prepare and communicate the material to the employees in advance”, says personnel manager Agnes Hansen.

Due to the Estonian system, which does not include trade union membership, and due to that fact that workforce involvement is organised more through election than through organised workers, the nature of work on the employer side was different from that in other countries. “The communication was more to the effect that the employees had to understand that they should organise themselves and that that organisation should be arranged through elections,” says Ms Hansen.

The role of the environment council/committee

The body for employee involvement in Estonia, the work environment committee, was to initiate the process of electing employee representatives and communicate the relevant information to the employees. The Estonian committee had to deal with the SNB forthcoming negotiations and it needed people who represented the personnel; it also had to deal with how these persons should be selected. The question was how the elections were to be organised so that all of the personnel would have the opportunity to participate.

The work environment council is a body governed by law and it has decisive influence in this matter. “The task of the work environment committee was to define how the representatives should be selected,” says Ms Hansen. “The law provides only that that selection has to be organised through a general election; it doesn’t define how this process is to be conducted”.

The work environment council deals with matters such as how the mandate is formed, how any breaches are handled, who will ensure that proposals are put forward and who will be responsible. Once this initial defining procedure had been completed the elections could be held. The elections were held in such a way that each employee could vote with his/her own electronic personnel card. The first vote was on the approval or rejection of the

proposed procedures for electing members. It was then decided that it was time to list the candidates. This was done in such a way that each employee could nominate another employee; when an employee had received ten votes he could stand as a candidate in the forthcoming elections. The elections were then held. The Ministry of the Interior was asked to delegate an independent representative to ensure that the elections and the voting had been held according to the rules and that there were no breaches. There was an election turnout of 40-50%, and a total of 1500 employees voted. There were 13 persons standing as candidates for the SNB and 12 for the RB. The Estonian SNB team consisted of five employee representatives.

The role of the personnel manager

The role of the personnel manager was to investigate who the partner should be for the negotiations with the employer and how the selection of representatives should be organised. The personnel manager was to coordinate things so that the representative could be elected to the SNB. The employees were informed about what being a representative in the forthcoming SNB negotiations entailed.

Information and education

The education for employees consisted of informing the personnel that elections were going to be held and explaining the election procedure. This was done well in advance of the elections. When the SNB representatives were elected they received more specific information as to requirements and the topics on which negotiations could be held in the process. After this the legislation was explained thoroughly.

6.10 Employee procedures in Estonia

The composition of the team

The Estonian SNB team consisted of five members; at the 3rd SNB meeting a deputy member stood in for an original member, who had left the company. Two of the persons interviewed are product line managers, both with a university degree; the third was a project technician, a technical university student.

Information

The members received the first information about the forthcoming SE conversion through internal information channels, such as intranet and notice boards. It was widely known amongst the employees, but no specific information was available.

Election of representatives

The representatives were elected by co-workers. "When we were nominated as candidates we couldn't refuse the task. The people voted for us because they trusted us, and since we were nominated we accepted the task because they trusted us."

One representative said, “When I started to work here at Elcoteq I was working as a trouble shooter, then after that I became a project technician. (I became involved) when the people with whom I had worked before nominated me as a candidate. They collected 15 names; 15 votes (signatures) were required in order to be nominated (to stand in the election), I think. I didn’t even know about it, so they asked me afterwards and I agreed.”

The election

Anyone who wanted could participate in the elections. In Tallinn there were notice boards where you could see the candidates standing in the election. The personnel voted with their electronic personnel card. There is a similar method of electronic voting in municipal and general elections in Estonia.

Education

It was not possible for the employee representatives in Tallinn to receive education until the results of the elections were known. “We had each done our homework; there was no education, and all the representatives acquainted themselves with the material we received. The legislation was translated into Estonian and Russian. The information contained explanations about what the SE meant and the procedures that would be followed.”

Knowledge level – Estonia

“You did have to really study hard before and after the process”, one representative said. “The preparation work consisted not only of reading legislation, but also discussing the process with others and thinking about it ourselves.”

“It was very difficult. Each word was full of meaning. This man from Finland was really good at that. Of course we discussed what was best between ourselves, by letter and so on, but this man (SNB expert) advised us about what was better or worse,” one representative said.

The first SNB meeting was described as a very ordinary meeting where various matters were dealt with. The Estonian delegation didn’t have anything in particular to come up with at the first meeting. The first and second meetings were devoted to agreeing on procedures and how to proceed at the following meetings.

6.11 Information, education and election in Hungary before conversion

With Hungary’s EU accession (1 May 2004) the Hungarian employee representatives started to form an EWC in Elcoteq, as the EU enlargement obviously meant that the group exceeded the threshold set by the Directive (at least 2 member states, 150 employees in each). (This claim was in fact initially formulated as early as in 2002, but Elcoteq did not fall within the scope of the directive at that time.) That was the very first time the Hungarian representatives learnt about the plan for converting the company into an SE. The company rejected the claim for establishing an EWC, arguing that the coming SE representation would be functionally equivalent to the EWC and that it therefore did not make sense to set up a similar body for the interim period. The representatives accepted this reasoning, and began preparations for the SE negotiations. They received the official announcement of the company in written

form two days after the SE legislation came into effect in Finland and Hungary (8 October 2004).

6.12 Employees procedures in Hungary

Election of representatives

The SNB representatives were selected by the joint meeting of the trade union body and the works council. The representatives basically wanted to have members with experience in negotiating with the employer, which meant in practice that they selected the candidates from amongst themselves. Language skills were not part of the criteria. Once the 9 nominees were selected, the works council members voted by secret ballot. (Hungarian legislation requires delegation by a works council decision and direct elections in the absence of a works council.) The 4 candidates with the most votes became SNB members, while the next two persons were elected as deputies. It is not surprising that the presidents of the union and the works council and their deputies became the elected members of the SNB. (See the list of SNB members in the Annex.)

Education

In 2004 one of the regular training courses arranged for the representatives dealt with the SE directive and its implementation in Hungary. On that occasion professors from the Labour Law Department of Pécs University gave lectures and consulted with the representatives. This education focused mainly on the rules for selecting the Hungarian SNB members.

There was a second training session prior to the election of the RB members. External consultants were present again, and a simulation exercise imitating the SNB negotiations was on the agenda as part of a bargaining workshop. This was useful in terms of raising awareness about negotiations at the European level, and it influenced the second round of the RB member nomination/election process. The fact that some of the SNB members were replaced by new representatives in the election can be attributed in part to that training course.

6.13 Trade union procedures, national and international cooperation

National negotiation delegation in Finland

TP, Teollisuuden Palkansaajat (employees of the industry) is a Finnish negotiation delegation of 11 Finnish trade unions, which cooperate on a common cause. TP has a special cooperation group (YTR), in which issues on EWC and SE practices are discussed.

Cooperation between trade unions at the European level

Trade union cooperation at the European level is organised in European trade union secretariats. These trade union secretariats make rules, nominate coordinators at the company level and influence the development of EU legislation. They also act as links with national trade unions and company employees.

As for the Hungarian SNB delegates, despite the union's international affiliation, they had had no previous personal contacts with the

representatives from the other countries. Although a few representatives had previously visited Finnish and/or Estonian plants, since they had travelled to work or to attend training courses there, international cooperation amongst the unions in Elcoteq in the various countries had remained underdeveloped.

Trade union coordination at the European level and the election of an expert

As soon as it was known that Elcoteq was going to begin the conversion process a support group was established amongst the Finnish trade unions. The group contacted the Estonian, Hungarian, German and Swedish trade unions and arranged a meeting with them in Helsinki on 22 November 2004. The issues discussed at that meeting concerned the negotiation process, and it was decided that since it was a Finnish company that was converting and Finnish legislation would apply, it would make more sense if the expert came from Finland. Mikaela Karavokyros was then elected, but in practice there was always this support group behind the scenes, which worked on the drafts of the agreement. Roni Jokinen, the second expert, was actively involved in the work of the support group. When Ms Karavokyros went on maternity leave after the second SNB meeting, Roni Jokinen took over.

There was a national support group plus the contact persons in the various countries concerned who were involved in the process.

Cooperation between trade unions at the Finnish level

There was close cooperation between the various trade unions in Finland. Since only two of the 13 representatives were from Finland, no union could do things by itself. Weekly team meetings and other additional meetings were arranged.

Election of the expert

The election of Roni Jokinen was a natural process. He is responsible for the agreements in the technology field, in which Elcoteq is involved. He was nominated for the process also because he is a member of a delegation for agreement policy in the European Metalworkers' Federation.

Commencement of trade union cooperation with Elcoteq employee representatives in Finland

There was frequent exchange of information between SNB members and the support group. A meeting held on 18 October 2004, ten days after the announcement of the conversion plan, marked the beginning of close cooperation between the Finnish trade union and the Finnish Elcoteq employee representatives. "We didn't see that it was our role to advise at that stage," says Mr. Jokinen. "We decided on negotiation procedures the meeting and on how we would keep in touch with one another."

At the meeting on 18 October 2004, all of the representatives of other relevant Finnish trade unions were also present. The idea in holding the meeting was to have some kind of anticipation as to how these procedures would take place and the time schedule involved. The aim was furthermore to provide the personnel representatives with basic information.

6.14 General conclusions on the procedures prior to the negotiations

General comments on elections

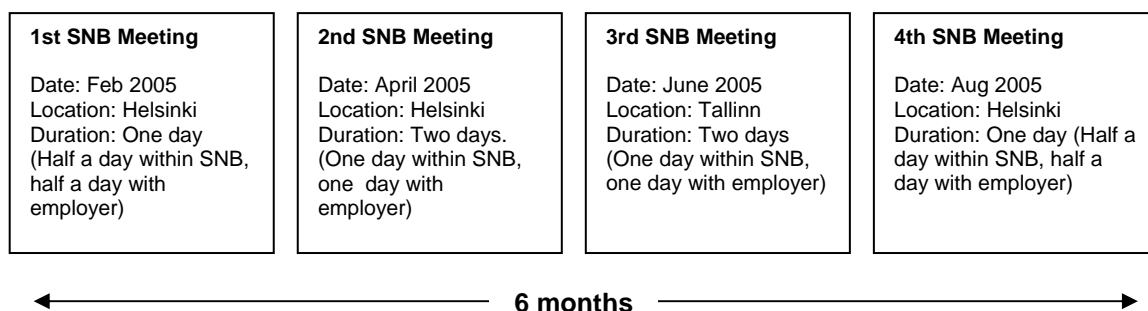
"The elections of representatives were to be held according to each national tradition. In Finland the procedure followed was that all of the representatives from the Finnish Elcoteq subsidiaries were brought together and discussions were held amongst the members. Efforts were made to ensure that each trade union would be represented. Language skills and skills for expressing one's own point of view were also important as well as commitment and activity," says Mr. Jokinen.

6.15 Conclusions

- Generally the employees were relatively ill prepared for the coming negotiations and this continued to the last SNB meetings. There seems to be a big need for independent and objective information on the issues involved in a SE formation for the employees, in order to reduce confusion and uncertainty.
- The above mentioned is accentuated by the relatively short time between the announcement of the coming conversion procedures and elections which is governed by legislation.
- The situation in Estonia was different from the other countries because there were elections to be held which is a very time consuming procedure. Worse than this, in this case the Estonian legislation for electing personnel was late and no actual education could be given to the employees before elections were held. The election of Estonian employees was only little before the first SNB meeting.
- The Hungarian preparations were pretty good in terms of transposition and selection of SNB members, but the delegates' knowledge on the international dimension of the affairs (e.g. on corporate governance issues, EWCs and SE) was limited.
- There was no proper knowledge about the different industrial relations background of each country involved.

7 The negotiations

The first special negotiating body (SNB) meeting was held on 23 February 2005. The negotiation took 6 months to complete on four different occasions. Between the meetings e-mails were exchanged both within the SNB and between the SNB and the employer, as well as the exchange of information amongst employers.



Timeline for the negotiations

Composition of employer representation

“As the CEO I am responsible for ensuring that these things are done in Elcoteq. I was present at all the meetings,” says CEO Hartikainen.

The SNB employer representation included:

- the Elcoteq CEO
- the Directors of Personnel in each country
- the Project Director
- the European HRM Director
- the personnel managers in each country.

The composition of employee representation

The SNB: 13 persons: 2 from Finland, 1 from Sweden, 1 from Germany, 4 from Hungary and 5 from Estonia.

Timetable for the negotiations

“It is important that we keep to the time schedule and do not take it for granted that we prolong the process,” said Mr. Hartikainen. “It is difficult for me to find time for numerous meetings on the same subject. The issues that are to be negotiated are clear in general terms; there are only a few issues to be negotiated – participation, for example.”

In the first letter to the employees, an invitation to the first meeting, it was stated that the aim was to have completed the negotiations in six months. If no agreement was reached, the company would implement the standard rules of the directive.

The SNB convened four times over a 6-month period, and e-mails were exchanged between the employer and the employees in the intervening periods between meetings. The individual SNB meetings took between 1 and 2 ½ days, and the length of the daily sessions was limited to 8 hours due to

the working hours of the simultaneous interpreters, without whom the meetings could not be held.

“The legislation makes provision for a 6-month negotiating period, and the negotiations can be extended by 6 months by special agreement with the employer. There was no need for a shorter timetable; although the negotiations were held pretty infrequently, it took that amount of time to deal with the matters on hand,” says SNB expert Jokinen.

The Hungarian SNB members felt the pressure of time; they perceived the time schedule as an important element of the company’s negotiating strategy. “The company wanted to conclude the agreement fairly swiftly and tried to treat the whole process of registering the SE as a necessary evil. That is why the management allowed 6 months for the negotiations and ruled out any agreement on the extension of the negotiating period from the outset.”

7.1 The standpoint, aim, and objective of the employer

“We are in a business where the personnel and personnel motivation are quite important,” says Mr. Hartikainen. “We are a service provider and the service is in fact produced by our personnel. It is therefore important for us that the personnel should be involved.”

“The way in which the personnel is involved in our operations is a different matter. In many companies there is not only consultation but also participation in bodies such as the board of directors or the committee of the board. This is more difficult when one considers how the enterprise is run. In our case we are lucky not to have a board committee, because they are generally very artificial bodies. We have a board that is very anxious to understand the entire business – matters such as where we are now, how our customers are acting, how we should react to them, what kind of strategic outlines we must have. I feel it is difficult if we bring personnel representatives into this work. We have none of our management there either. If we bring new members to the body, it makes it different. Everyone has to bring something strategic to the table. So if there is someone from head office or another unit represented there, it is difficult. This is something that is a cause of disagreement. It is a question of what is sensible for the firm. If we then think about the extremes that we would have with a personnel representative, who would be elected through elections. That would be a strange situation, because the people electing that person would not think about whether he/she was the most suitable for that type of work, whether he/she is suited to the team and able to communicate with these people. Such questions are extremely relevant when one thinks about the work of the board or the composition of an administrative body,” says Mr. Hartikainen.

The administrative significance of the RB

“It depends entirely on how it works. The same applies to the management body or the board of directors or any administrative body. It is significant only when it works well. If there are people that are able to communicate, if there are people who are able to see the business as a whole, who are astute, those aspects can be immensely important. Then you can have dialogue about how things are done within the firm, how the personnel sees that the strategy works, how it is perceived and how it could be improved upon. It can then be an extremely important and strategic body,” says Mr. Hartikainen.

The importance of the RB

“It’s a question of composition. It’s an extremely sensitive issue. We had a request for a common language. The reason for that was simply that if there is no common language and there are simultaneous interpreters present this deteriorates the work. The gestures made will not become apparent, the phrasing used and how things are brought up. This is what communication is about. If there are interpreters in between it is not certain that they have translated correctly; the meaning may have changed in translation. This is why I think it is important to have a common language. If we really want to have a good precondition for our work, it is that there should be a common language,” says Mr. Hartikainen.

The aim of Elcoteq

“I don’t think we had any aims or purposes carved in stone for the negotiations. We went about it as stated in the directive; what we are creating is in the spirit of the directive. We were anxious to have a good setup and to ensure that it would work so that we can discuss matters more freely,” says Mr. Hartikainen.

“The employer was aiming to create a functional system in contrast to a formal bureaucratic system where meetings are held just for the sake of meeting. The purpose was to build a system that had something to give the personnel and the management of Elcoteq. The starting point was to have a genuine dialogue,” says Ms Aila.

The objective

The primary objective of the employer was to reach an agreement because the standard rules of the legislation are not very practical. “Although there are outlines in the SE Directive, there are still a lot of practical matters to be considered. We thought it was very important to negotiate the principles so that the practical arrangements could be negotiated in further detail,” says Ms Aila, the Project Director.

The employees’ perceptions of the employer’s objective

The employees’ perceptions of the employer’s objective ranged from a focus on negotiating time – half a year, whether or not an agreement was reached –, to the concern that the negotiations should be held in good spirit. Also, one representative noted that the employer did not want to lose certain business prerogatives it had, such as the exclusive participation of employer representatives in different meetings, and that the aim was to find the best solution.

“When we sit down we look first at what the law provides, where the limits are, and what subjects can be agreed on, and then we sit down and negotiate on the content and what the agreement comprises”, notes one representative.

“If anything can be interpreted from the first agreements that were introduced at the first meeting, it was that the new involvement system should not bring new costs for the company. That’s the reason why they wanted to use English only in the RB meetings. That way it would of course be faster and easier to arrange meetings. The main overall objective was that there should be no participation on the board or in any other bodies that make strategic decisions;

this was apparent in the employer formulation of objectives during the negotiations,” says Mr. Jokinen.

7.2 The aim, objective and standpoint of employees

“This brings a new form of communication for the Elcoteq employees. Prior to this there was no international negotiating mechanism, for example, for exchange of experiences between different countries,” says Mr. Jokinen.

“The SNB does not have an independent role; its purpose is to negotiate how it to proceed in the future. There is no other function than this. The atmosphere at the SNB stage will affect the future work of the RB, how it starts off. The aims are connected with the content of the agreement. What has been agreed upon must be clear enough for each party and as unambiguous as possible so that the RB can start its work as smoothly as possible so that there is no need for disputes over which documents has to be delivered and what are the rights in relations between the RB and the employer. It is important that both parties should be genuinely unanimous. No agreement can produce cooperation; cooperation is produced by cooperation. Rules and procedure help the cooperation between the RB and the employer. Cooperation was both the employee and the employer aim,” says Mr. Jokinen.

The aim of the employees was to reach an agreement and that the level of employee involvement would be above the minimum level provided by the standard statutory rules.

As one representative put it, “We had numerous discussions on how to formulate things. I think all the factories in Europe had very common aims. All we tried to do was to make the agreement a little bit wider than what is provided by the secondary provisions.”

Employer’s perception of the employees’ objective

The employer’s interpretation was that one of the important employee objectives was to have representation directly on the board (participation). Since there was no such legal obligation, this was not included in the negotiations.

7.3 The issues to be negotiated - employer side

The employer considers that the issues for negotiation are very clear-cut; they are laid down in the legislation – participation, for example. “The issues to be negotiated are defined by the secondary provisions, which provide a minimum level for the negotiations – so there are certain limits. No personnel representative would start bargaining unless the issues to be negotiated go beyond these minimum requirements,” says Ms Aila.

The issues on the table

The negotiations focused on the following points:

- the work of the RB and the RB committee
- the number of meetings
- languages
- education for RB members and how it is organised

- the right to call in an external expert
- the resources of the RB – for example, members do not have a common language: need for interpretation and translation
- the methods and forms of information and consultation, the frequency and content of written reports and how these matters are to be organised in practice
- the forms of consultation, in what circumstances, with whom and the methods used to ensure that the information flows.

These issues are mainly a list taken from the standard rules laid down in the legislation. The issues most debated were participation (board representation), the language issue, and the use of an external expert.

Representation on the board

The employer considers that the directive states very clearly when representation on the board is provided by law. The employer would not create any participation for the personnel because such had not been arranged before. Another point in this context was that the management cannot appoint themselves to the board and therefore cannot appoint anyone else.

As the management points out, “The personnel is trying to organise participation but does not consider whether it makes sense for the company or not. If such a matter can be negotiated, then it is negotiated. The external expert in particular thinks that this should be the starting point.”

How many meetings per year?

One issue to be discussed was the number of meetings per year because this is not defined in the legislation. The CEO says that it is not important how many times the RB convenes as long as it works well. “Then I am more than glad to arrange even quarterly sessions, if it works and the right people are involved. The limit is that when there is half a platoon of simultaneous translators and everything depends on elaborate arrangements before the negotiations can even start, that’s the limiting factor. There is no sense in that; it merely costs the company money. For me it was important that there should be some benefit for me in running this company. If it is beneficial for me, I am certain that it is beneficial for the employees in how the message is put across and that the issues requested are brought about. I think there are procedures that have been learned from the old trade unions, that the other party is not trusted, and that form is more important than the content”, says Mr. Hartikainen.

Language

The company wanted English to be used as the common negotiating language at the RB meetings. The management says that the company would have invested a lot in language training. During SNB meetings, German, Swedish, Finnish, Russian and Estonian were the languages for which there was simultaneous interpretation and translation.

Initially, the company tried to insist on English as the working language. It was a serious claim, so much so that, according to the Hungarian interviewees, at

the first round of negotiations the company envisaged only one annual meeting in order to avoid costly simultaneous translation for all languages.

The legislation in the various countries

Since employee involvement is placed above the national level, the issues to be negotiated are not regulated in the various countries. Investigations were carried out to ensure that the agreement was not in conflict with any legislation in any country. This concerned various details such as the length of term of a member of the RB; the term of office was defined. In Hungary there was a regulation that states that a person with managerial rights, the right to hire and fire, is considered to be a member of the management and cannot be an RB representative, so the agreement had to make provision for the event that a person is promoted to a managerial position.

As to the legal background in Hungary, for instance, it was not understood how the Hungarian system of “recalling” delegates works in the national system. For the Hungarians it was self-evident that if a person is delegated to certain positions (in this case, if the works council sends a person to the SNB or the RB), this is a reversible action; the same body is entitled to change its position and replace that person by someone else. One of the possible reasons is that the person has been promoted into a position where he/she will “practise employers’ rights” (munkáltatói jogokat gyakorol), i.e. he/she can hire and fire employees. The way Hungarians view the resolution of this conflict of rules is fairly characteristic: “If we cannot agree on it, it’s not a big deal – we’ll come to an agreement with the person concerned, and he/she will resign.”

7.4 The issues to be negotiated, the objectives and purpose they serve, and how the negotiations were organised - employee side

Mr Jokinen states that the trade union has several years of experience in EWC-related issues and that the arrangements in the RB agreement do not differ very much from these. “The experience gained the work of the EWC shows that the following are important issues to have in an agreement: interpretation and translation services; at least two meetings per year so that there is real interaction; e-mail in the periods between meetings so that RB work is an everyday activity, rather than a matter of filing each report when it arrives; it is also important that representatives should have enough time and the appropriate means to do their work. In Finland this is not a problem; everybody has a computer and e-mail. But since this is not automatic in all countries, it is good to have it specified in the agreement.”

According to Mr Jokinen, the agreement will not be any worse than the standard rules of the law. “This is a very clear basis. In the employer’s first draft there were, in our opinion, several points which were worse than what the standard rules provide. It stated, for example, that only English should be used as the working language. I understand that this would be much more cost-efficient than translations, but in order to reach real interaction it was considered that it is vital that each member have the opportunity to communicate in his/her own language as clearly as possible,” says Mr. Jokinen.

The issues connected with the agreement

In the context of the negotiations on the agreement the focus was on the following issues:

- the rights and powers of the future RB members
- the right to call in an expert
- the amount of time involved and the practical means provided such as tools, etc.
- interpretation and translation of documents, etc.
- the number of meetings
- the subjects to be discussed at the meetings
- the right to participate at board level.

“It was known that participation on the board is the most difficult issue to have included in the agreement,” says Mr. Jokinen.

It wasn't discussed if the number of future RB members was to be 13 or 26; this was not important.

How many meetings per year?

“We wanted to have at least two meetings per year. If there are fewer meetings no culture develops. The meeting simply becomes an occasion for subsequent reporting on what has happened during the year and there is no looking ahead to what the future holds, which to my mind is more important: it is important that the personnel can state their opinion on strategy,” says Mr. Jokinen.

On information and consultation

The SNB held extensive internal discussions on what should be included in the RB information and consultation rights, what the content should be, how often it should convene and what would happen between meetings.

Participation

The personnel clearly wanted to have participation on the board, but this was rejected from the outset, from the very first meeting, on the basis of the argument that it had not been organised before so it would not be organised in the future either. In Finland the Act on the Administrative Representation of the Personnel would have given the Finnish trade unions a possibility to request an arrangement regarding board-level representation, but this option had not been used.

The legislation in the various countries

It was considered that as the result of differences in legislation in the various countries there would be different protection against dismissals and different rights and powers in different circumstances. “The SNB and RB members should have as good or better protection than the protection provided in each country, such as the rights enjoyed by employee representatives in Finland,” says Mr. Jokinen.

Other important issues

It was important for the employees that they should be able to choose their representative in the RB freely, and it was also important that each should have equal rights, the right to use a computer and the same facilities and means. It was important that in order to prevent misunderstandings that translations be granted. Thought was further devoted to how the internal procedures in the future RB would be arranged in each country.

The employer's perception of employee issues

"The employees brought several issues other than those mentioned in the first draft we had put forward," says one employer representative.

7.5 The procedures during negotiations - internal SNB procedures

Before the SNB negotiations started the expert and the employee representatives agreed on the procedures and the process. It was explained that there would be an internal SNB meeting, then negotiations with the employer and sometimes a follow-up meeting after negotiations with the employer. It was also agreed that the company would cover expenses and allocate a budget for translation services, etc. This was important because the translated drafts for agreements were forwarded by e-mail and it was easier to comment on the drafts in this way.

The SNB agreed internally on the procedures for the forthcoming discussions before the negotiations began.

There was frequent e-mail exchange between SNB members between the meetings. The initial drafts were outlined in Finland and there were comments on the proposals from the employer as well as remarks on corrections and changes on the SNB's own drafts. The comments on the drafts were collected and the changes were settled during the SNB internal meeting. The issues were decided within the SNB meeting; they were not voted on, but a compromise was found for all suggestions in which everyone participated. At the last meeting there were several issues which were not voted on, but all of the members stated their opinion on them in turn. This concerned details such as whether the body should be entitled to use one or several experts. No actual votes needed to be held during the process.

The importance of the internal SNB meeting

The employees consider that the internal SNB meeting was important. The cultural and language differences were such that they required discussion. Everybody needed to understand what was being said in the same way. It was important that the employees should have a common opinion when they met in the talks with the employer.

Since the RB members had not known each other previously, they introduced themselves at the beginning of the first meeting. As a Hungarian interviewee said:

"The first day was about getting acquainted. There were quite a number of odd characters as well. We asked each other about who represented whom,

how he/she had been elected. There were some among the Estonians who were bosses of 1000 people; this was quite strange for us... There are team leaders among the Hungarian representatives too, but this is completely different."

So the legitimacy of certain SNB members was questioned at the first meeting, and the suspicion was raised that some of the people were from the management and would act on behalf of the management.

Voting

The only votes held concerned the procedures and the SNB chairman, who was chosen amongst the members more or less unanimously.

The chairman

The role of the chairman was pretty important, since she was the one who would be holding the discussions with the employer and announcing the opinion of the SNB.

Initial contacts amongst the SNB members

The first contact the SNB members had with one another was at the first meeting. There were no e-mails or anything else before that.

Internal coordination in each country

One person in each country figured as an internal coordinator and spokesperson for their group.

The procedures after the first SNB meeting

During the first SNB meeting it was agreed that each country would take the draft agreement presented by the employer back home to be fine-tuned and that the SNB would go through it at the following meeting.

The length of the meetings

The SNB meetings usually went on for two days – the first day with the employees, the second with the employer.

The initial SNB draft

An outline for the first draft was produced in Finland among employee representatives and the lawyer, including the issues which the employees wanted to have included in the agreement. The lawyer was familiar with the EWC and it was taken as a model. The list of issues was complemented by the statutory provisions. Given the experience gained with the EWC, the latter was present throughout process as a basis for deciding which issues should be negotiated.

The development of the initial draft

The only thing that happened to the initial SNB draft during the procedures was that there were passages that had to be removed.

“For example, the Tallinn factories thought that some points could not be demanded, although this concerned minor points. Finland wanted the national support team to be included in the agreement so that national employee representatives could be used if they were needed on any specific issues so that the travel and other expenses of the group would be covered. The Estonians considered that because they did not have this type of personnel representatives they didn’t need such arrangements. The issues on which there was disagreement were minor”, says one personnel representative.

Interpretation and translations

Each language represented inside the SNB was interpreted and translated during the proceedings.

Expert support in the various countries

The Estonian team received education from the expert before the third SNB meeting.

The role of the expert

The role of the trade union expert was very significant. He conducted the discussions amongst the SNB members and played an important role in the discussions held with the employer.

7.6 How the negotiations between employers and employees were conducted

“We were pretty well prepared for the forthcoming negotiations because we had a person who worked primarily on this matter; she knew what should be negotiated. The personnel was in a rather awkward situation, since there was really no one who knew what this was all about,” says Mr. Hartikainen.

“Our starting point was that the employees must have the right to use external help, and so they did. On the other hand, this leads to a situation where this person, for whom the event is also the first time, is an outsider. It makes the negotiations more difficult. We had difficulties at least at first in getting on with the negotiations. We could see clearly that the other party was not prepared and that they didn’t know what it was all about and what was being discussed. We didn’t have the EWC, which made it more difficult. It was difficult at the beginning. At first we wanted to agree on what the directive prescribes for negotiation, in a reasonable time frame. That was one of our starting points. It does not bring substance to the agreement if we just go on and on with the talks,” says Mr. Hartikainen.

Events at the first meeting

Before the first SNB meeting the employer introduced the negotiation procedures for the forthcoming discussions. Every representative had also received the conversion plan and the report as well as the legislation, and everything had been translated into each language. At the first meeting the employer arrived with a draft agreement.

The employee representatives received the names of the representatives from other countries before the first SNB meeting, and they received their e-mail addresses at the first SNB meeting.

All that was covered at that meeting was the introduction of the negotiation procedures; the employer presented the initial draft agreement and stated the right to use an expert and the costs that would be covered.

Description of the meeting with the employer

The meeting with the employer was like an ordinary working day. The chairperson was the only one who spoke during the meeting with the employer. She went through the topics presented point by point and breaks were held in between. When the parties convened again the employer explained that the management agreed on some points but disagreed on others. After this, the SNB had a session on its own. "We looked at the draft point by point, and this man from Finland [the expert] looked at the topics and said whether they were good or not – e.g., this they won't agree with, this they will, and so on. After this, questions were asked – e.g. "What is the Hungarian team's opinion on this?", and the team discussed it," one employee representative explained.

Breaks during meetings

There were breaks held during the meetings. When an issue was being decided, the employee and employer representatives held separate group meetings during the negotiation.

The SNB and employer standpoints after the first meeting

The SNB had agreed internally that it would proceed point by point in the discussions with the employer. The employer had then said that both parties would state their comments, which would then be discussed. "We had not devoted enough attention to these negotiation procedures. One or two meetings were wasted because the parties didn't understand each other," one representative said.

"At first the SNB's idea regarding the agreement and the employer's idea differed like day and night. The employer said that this first draft was just a draft and would be further improved, and the draft contained points that would be discussed. We had held discussions amongst ourselves on the content of the agreement and we had the rough version, which of course we didn't show to the employer", said one employee.

"It was clear for us that we would start negotiations and that we wouldn't reach an agreement, because we considered that we wouldn't agree on a result that was worse than what the secondary provisions would have provided," said one representative.

The nature of the discussions

The most difficult thing to solve was participation at board level, on the one hand, and how often the RB would convene on the other.

Internal procedures

Charles Ferguharson was the chairman; he and the project coordinator, Minna Aila, were the people who did most of the talking. The spokesperson for the SNB was the SNB chairman. It was not such a formal occasion that others could not speak; the talks generally proceeded in a manner where people did not shout each other down and the matters were gone through systematically.

How the negotiations proceeded within SNB

One representative said that at the beginning that the proceedings of the SNB were largely Finnish-driven because of the draft agreement and all the issues involved with it, so there was not much that the other countries could contribute to the base. "We were united within the SNB. We were lucky to have such good lawyers who could bring up matters when no one else within the SNB was in a position to do so," says one representative.

Internal SNB unanimity

"The SNB was unanimous at least towards the end of the negotiations – although I wasn't present at the first two meetings – that there had been a great deal of discussion. To my knowledge some of the SNB members were somewhat misinformed with regard to how the agreement stands with regard to the secondary provisions. There were such understandings that ok, when we make this agreement we leave some things out, the idea being that it wouldn't do any harm because these would be provided automatically through the secondary provisions of the law. But in actual fact the situation is that when we agree about something the secondary provision no longer holds. There were these kinds of differences in points of view to begin with. The education provided was effective, and then towards the end we were pretty unanimous. And this showed how the negotiations developed. When the employer saw that the group was now unanimous then the negotiations began to proceed more rapidly," says Mr. Jokinen.

"As a rule we were unanimous," says one representative. Another says that "It is of course always so that some see a matter one way, and others see it differently. Then we had investigations to see how the other understood something. It was a process where everybody tried to understand each other. No culture is better than another, but one can see things differently."

7.7 The negotiating strategy and tactics of the two parties

The negotiations were based on the issues laid down in the legislation; the task of the SNB was to discuss how the details of the arrangements would be carried out so that the final result would be in keeping with the wishes of both parties. The expert said that the negotiations were to some extent based on what the standard rules provided and what could be achieved through negotiations. The directive leaves several issues open, e.g. how interpretation is arranged, and to what extent. Compared to the EWC the new item to be negotiated is participation. "There the question is when this is mandatory so that the personnel is granted participation automatically. There was a lot of interpretation in this regard and this caused a lot of work," says Roni Jokinen.

The participation had not been organised at the national level in the Finnish Elcoteq subsidiaries. The legislation requires that the participation has to be demanded, and this had not been done early enough. Once the SE process started the demand was put forward promptly, because the negotiation time for such a demand is one year, after which participation will be stipulated if it is not agreed upon. Since Elcoteq OYj converted to Elcoteq SE, the matter of arranging participation could not be demanded by force of Finnish law.

The importance of the negotiation culture

“The employer-employee negotiation culture practised in Finland is quite formal. The reason for this is that it has been defined somewhere and the other party holds on to what has already been defined. I personally find this pretty difficult, because I am only interested in the underlying substance. For the better the interaction is, the better the RB can work”, says Mr. Hartikainen.

“I have worked in many countries and continents, in Asia, Europe and the Americas. Each time I have found that the better the actual interaction is between the different groups of personnel the more motivated the employees are, and the better forthcoming changes can be coped with. It is a means of creating substance. If you can create substance it is worth doing a lot of work – in fact is worth doing a considerable amount of work to that end. It is never a cost for the company – it should never be thought of like that. It is an investment for the future. I don’t in any case advocate that we dig “potero-holes”¹⁶ and then the employer and the employees get down to negotiating. I think that’s a waste of time,” says Mr. Hartikainen. “If the other party suggests this kind of action, I will be against it. I think that we should stop negotiations if that is what we are after.”

The Hungarians’ view of their counterparts: “The Finns were more radical. Some of their demands left us completely astounded! For instance, the demand for a ‘national support team’ was surprising for us.”

The importance of the procedures

The first and second SNB meetings were spent on working on the basis of the draft agreement presented by the employer; the employees commented only on that draft. At the third meeting the employees arrived with their own draft agreement, in which the SNB aims were explained. The aims were placed “high enough”, says Mr. Jokinen. For example, four meetings per year and a seat on the board were two of the demands put forward.

The employees started to revise the employer’s initial draft, saying, for example, “We want to change point 1.1 a – e.g. the expert considers that this is not the best way from the employee standpoint.” There was then a change of strategy, and the employees introduced their own draft agreement at the third SNB meeting. Both the employer and the employee versions were examined at that meeting; the structure of both drafts was approximately the same.

There is no legislation on how to conduct the negotiation. The employer considers that this cannot and should not be regulated in any way if an agreement is to be reached. As to whether the employees could have agreed on different procedures, expert Jokinen says, “The other party cannot dictate

¹⁶ Military term: “potero” is the Finnish word for a trench grave for two persons.

that we discuss only these issues, because that would be then end of the negotiations.”

The importance of the SNB and the employer meeting

Many decisions were made during the SNB discussions. “There was give and take: ‘this is good for us, that is good for you.’ Many issues were agreed upon like this,” says Mr. Jokinen.

Things progressed at each SNB session. Some issues were agreed upon. In principal everything was open until the very last meeting, but some issues were agreed upon earlier. Before the last meeting only a few questions still remained open – the major issues, participation rights and the number of meetings.

The importance of the breaks in between meetings

The breaks were important, since otherwise the discussions would have proceeded too slowly – if there had only been a 1-day meeting and constant arguments. During these breaks an opinion is formed, a limit under which the party will not go. “If you have a certain idea about something, and I have my opinion about it, there is a point where both parties can meet: ‘We definitely cannot do *this*, but we could do *that*,’” says Mr. Jokinen.

The importance of the SNB chairman

“It is important that the person who is SNB chairman can argue claims. It is also important that at least each person within the SNB should be able to argue their case sufficiently clearly and make their opinions understood when different matters are decided. The role of the expert is most important in situations where opinions within the SNB differs,” states the SNB expert.

The importance of the expert

Mr. Jokinen considers that the expert can never replace the need for an SNB; the expert does not know the Hungarian or German system.

The role of the employees, the role of the expert

The role of the expert was to support the SNB group. “In the last analysis, it is the people in the group that decide the issues”, says Mr. Jokinen. “My role was such that as soon as I became involved I met the Estonians because there were still some misunderstandings. We went through the various alternatives pretty thoroughly – ‘If we do such and such, the outcome will be such and such’, and so on”, explains the expert. “The role of the expert was to answer questions but also to direct the negotiations further,” says Mr. Jokinen.

The importance of trust

There is a long negotiation process and it develops a sense that you can trust the other party. “You must be able to discuss”, says Mr. Jokinen. “If these issues are not agreed upon, there will be no agreement”. The same applied to the SNB: “If you cling to those claims, you can forget it, we’ll do with secondary provisions”.

To begin with it is pretty much required of both parties; they are a long way apart, but they gradually come closer and you begin to see what the actual requirements of the parties are.

On what was agreed

“The expert considers that what was agreed was the common opinion of the both parties”, says Mr. Jokinen.

“We considered this a very important agreement because it was the first of its kind. So it was also so important for the personnel that we wanted to invest every effort in it,” says Mr. Jokinen.

7.8 How agreement was reached and remarks on disputes

“I think that right at the beginning there something that I hadn’t been clear enough about: what we would be discussing. So I wondered if things were going in the right direction. I think the rest went well. I can think of no particular dispute remaining. The last meeting was the same as the previous one, so there were only a few things to discuss. And they were agreed upon in a sense. It wasn’t unpleasant; neither party adopted the attitude of wanting to force some issues through. It is possible that the other party may perceive this differently, but I really don’t believe that that was the case,” says Mr. Hartikainen.

Remarks on disputes on the employer side

“I don’t think that either party was left with something bothering them. Some issues that can be important for the other side can be negotiating tactics. I can’t say what has been very important or less important for the other party; some items were used as pawns in the negotiations so that other issues could be got through. I can’t say. For my part there was nothing left. In the beginning there was the issue that the other party wasn’t prepared enough for the meetings; they couldn’t see what was important in different issues. But when it dawned and they thought ‘hey, now we know why we are here’, then I think the discussions made progress objectively until the final result. As far as I know, neither party should have been left with any grievances”, says Mr. Hartikainen.

“I would have liked to see the employees minimise the fact that there wouldn’t be any external experts involved in the RB work, because these supporters have no experience of this field and only bring in old-fashioned models; instead of that, we could modernise our functions so that they would really work,” says Mr. Hartikainen.

The CEO thinks that there should be a purpose for each RB meeting convened; why the meeting is being held should be thoroughly thought out. “Each meeting that does not bring added value to the company is a disadvantage for the company: people are away from work. I am not somewhere that would bring benefit to the company, I am not attending meetings with clients, and I don’t bring any result or minimise losses. I think each employee should have a similar attitude. It is when people relate differently to their work that there are different agendas,” says Mr. Hartikainen.

“We wanted to create a system where we could proudly say: ‘hey, we’ve got something that works. By this I mean that we receive valuable knowledge from each unit that can be reported to the management, what the representatives say, what the issues are that we have to contend with. It has to be considered how the company can be more competitive so that more meaningful jobs can be created for the employees. That’s how it works, instead of digging “potero-holes”¹⁷ and having snow ball fights,” says Mr. Hartikainen.

Mr. Hartikainen explains that it would not work at the board level or in the management team if there were people who say “I represent one particular opinion” and the next one represents another opinion, without considering what is good for the company. The body would be voting on things all the time, which is very unpleasant”. “It is important that the people in decision-making bodies find a common chord. If this is not achieved, the company cannot be properly run. The common chord also means that each person plays a different instrument, each has their own role and each has something to give the group.” The CEO considers that this is a universal rule; the difficulty in the RB is that people there are elected and they come from different cultures and there is no question of arguing that any particular person doesn’t belong there. “The most difficult thing is to get the RB to run properly as a body,” explains Mr. Hartikainen.

Easy and difficult issues to solve

The practical arrangements were easy to solve. The secondary regulations provide a basis for comparison, so some things are easy to solve. It is better to reach a sensible agreement than have the secondary provisions, because many things are left open if agreement is not reached. Otherwise the parties would be in a never-ending negotiation mode. So the management reckons that it is in the interests of both parties to reach an agreement.

How agreement was reached

Before the agreement was reached there was a break meeting where both parties went over their standpoints on different issues. “As far as I recall, the employer agreed to the employees’ standpoint on small technical issues.”

According to all of the Hungarian interviewees, the Hungarian SNB members had a fairly important role in accepting the managements’ arguments against participation and focusing more on elaborating additional instruments for enhancing the information and consultation process.

“There were rather diverging views (among the SNB members) on board participation. The Finns and the Swedish wanted it, and the Germans were less keen, whereas the Hungarians and the Estonians didn’t want it at all. On the one hand, it turned out that the legislative support was lacking, and this was decisive; but on the other hand it was also decisive that we began to talk about what kind of real advantages could come from the representatives sitting on the board. And then the members realised that there was no significant added value. We talked about the topics of decisions in which they wanted to have a say, issue by issue, and then the list of consultation items and the form of consultations began to take shape more clearly. In the final analysis, that was that really mattered....

¹⁷ Military term: “potero” is the Finnish word for a trench grave for two persons

It was the turning point in the course of the negotiations when we offered the possibility of face-to-face consultations between the Deputy HR Director and the future president of the representative body prior to and following every BD meeting. The Hungarians made a tremendous contribution by putting quality of communication on the agenda. Because if they sat on the BD, they could not have a say in (decision-making on) major matters... Or, instead, should a fruitful partnership be developed with meaningful content?

At this point, the background of each national representative was indeed of great importance. The Hungarians didn't expect anything from board participation; they didn't fight for it. Instead, they sought partnership. At home, they are also members of the supervisory board, and are aware that they won't become stronger or cleverer through this position. On the other hand, if communication is good and a sort of trust-based relationship is developed, they do perform better. Personal relationships and their continuity were important to them. Now that the Budapest office has been established and the former director of the Pécs plant has become the Director of the European Region, these facts are perceived as a guarantee for and continuity in partnership... The Finns have come from a different world, where, as a rule, the relationship with the management is completely different – adversarial.” (European HR Director)

Of course there were internal debates within the Hungarian team, too. For instance, not incidentally, the former trade union president took a more militant stand, while the works council members tended to prefer a 'softer' approach to negotiations. But the Hungarian delegates were finally also convinced of the usefulness of the “trade-off” negotiated in the final round. When the Finns came up with the 'worker director' issue, the trade union secretary was in favour of it, arguing that if it was a right guaranteed by law, then we must insist on it. Personally, I am more practice-oriented, and I took a softer stand from the outset, but he finally agreed. It was an extremely hard round, because there was no outside expert who could have given us advice; we had to sweat everything out. (A Hungarian SNB member.)

“Yeah, the Finns were more prepared for the negotiation than we were... But interestingly, they also made a mistake, as they missed the deadline for the claim for participation. It should have been submitted a year beforehand, because according to Finnish law the level of participation prior to transformation must be maintained. By the way, we were less enthusiastic about this issue. This is clearly the board of the owners; the CEO is not a member either, so it's no wonder that the employer fiercely opposed the idea. In actual practice it would be an enormous problem to find a joint representative who is fairly good at English, and has all the necessary knowledge in corporate finance, stock exchange matters and legal affairs. And we should find somebody from outside the RB. Moreover, due to the confidentiality, he/she could not give the employees any information, not even the RD members. So we could not make much use of this kind of representation, and, in our view, the person we send there would in fact eventually become *their* guy, a puppet. So we had no idea who that person could be! That is why we were ready to understand the employer's concern, but in exchange we questioned the content of information and consultation rights. Our major concern was to achieve a real dialogue, and we finally managed to reach an agreement with a better quality of participation.... We have access to the Management Conference (over and above regular RB sessions). This isn't participation, but we have frequent meetings with the Deputy HR Director who provides us with written material before the sessions and gives us information afterwards, and we can have consultations on

request... Frankly, we stood firm (to push the Finns) to deter them from this issue. We keep in mind our home experience on the supervisory board, where we are present.” (A Hungarian SNB member)

The possibility of not starting or interrupting the negotiations

The possibility that the SNB would not start negotiations was ruled out. This would have been the worst alternative for the personnel because the company could then have an SE without personnel representation at the European level. This is laid down the directive, says the expert, and the same applies if the negotiations are interrupted.

In spite of this it was never considered self-evident that an agreement would be reached. “It is genuinely a situation where, if some demands were not agreed to then this could have been the alternative. My guess is that we would have held on to the participation claim – we would not have signed an agreement,” says Mr. Jokinen.

It was always the main aim of both parties to reach an agreement.

7.9 Comments and conclusions

The employees think that negotiating for the future work of an RB was a good way to go about things. “In this way the directors could hear the opinions of the SNB” and “The agreement is made for each company’s own needs” are comments from employees. The hard part was that none of the employee representatives had had any experience of this kind of work. “The law is very hard to understand for a layman,” is a further comment from the employees.

“The whole process makes it possible for the company to link the employees from different countries. This is positive. It’s called democracy,” says one employee.

The employees consider it positive that mutual understanding has been agreed upon, because this is a good basis for future cooperation.

Education

The expert thinks that if there is something to be learned from this process it is that there should be proper organised education for the SNB members before the negotiations. “If the SNB members have enough knowledge, then the negotiations proceed faster,” says Mr. Jokinen. This could be organised in each country or by the local SNB expert.

Language

The SNB’s consists mainly of fine-tuning sentences and formulation. The language differences came into play in these circumstances. In one case the same words in Hungarian and Finnish meant two different things, which required some work to get it right in both languages.

As mentioned earlier, one of the key wishes of the employer was to have a common working language in the future RB. The management points out that it can be challenging to communicate in ten languages and that it is difficult to

communicate when one considers all the translations and interpreters involved and that these can also be faulty at times.

Culture

There is a common understanding on both the management and the employee side that cultural aspects do affect the work of the SNB as well as that of the future RB. It was sometimes commented that cultural differences are considerable.

As a cultural aspect, the style of interpersonal communication affected people's mood and this was perceived as an obstacle to effective work, especially to begin with. For instance, in the interviews with the Hungarians there are anecdotes about how awkward they found that their Finnish hosts kept an "arm's length" relationship, which was quite different from the warmer style of hospitality that they were used to. They did their best to improve this situation, but they did not succeed until the second or third meeting of the SNB. Another cultural peculiarity was that the Hungarians felt that their humorous approach as a means of relaxing tension in the course of even the most serious negotiations was completely incomprehensible for their counterparts with different backgrounds, and in this sense simultaneous translations could not help either.

Not only does national culture affect interaction, but the different traditions of employee involvement also affect the work of an RB. The most extreme example was the Estonian system, where all elected representatives were non-trade-union members. This differed markedly from the other countries involved, where trade unions are a common channel for the employees to work through. This did affect the work of the SNB. The Estonian employee representatives advocate understanding for the different systems in all of the countries.

Money

The management considers that a major aspect is the costs involved. The arrangements do bring costs related to time, translation, travel, interpretation and other practical arrangements such as language education.

8 General conclusions

The employee representatives were relatively ill-prepared and ill-equipped for the forthcoming SNB negotiations. This continued right up to the last meeting and required considerable input from the trade union expert.

The knowledge level of the employees in the SNB was deficient. There was not enough education, and even during the SNB negotiations not everything was very clear for the employees. In the worst cases this meant that there were serious misunderstandings on what the legislation provides, e.g. some members thought that it was not necessary to negotiate all of the issues mentioned in the standard rules in the SED or to include them all in the agreement because they presumed that they were granted automatically by law.

The issue of lack of knowledge and understanding of the legislation may not be totally controlled in any future SNB negotiations. This is mainly due to two factors. Firstly, the legislation stipulates that “after the board has approved the conversion plan the company shall take necessary steps to elect the employee representatives”¹⁸, and “the negotiations start directly after the representatives has been chosen”¹⁹, which in itself means that there is little or no time for elected SNB representatives to educate themselves. In the Elcoteq subsidiaries in Finland there were some information and education measures prior to the announcement of the conversion plan, but it was not until the first SNB meeting that the employees actually realised that very thorough education was needed.

Secondly, the question is whether it is feasible to expect employees to be able to learn to “read” legislation in such a short period of time, even if this is several months. First of all, an ordinary personnel representative cannot be automatically expected to have the ability learn such a new task in a short period of time. And secondly, even if an employee did become good at this, it would nevertheless also mean that there could occasionally be misunderstandings or a lack of knowledge. Moreover, it is perhaps not the meaning of the legislation that a representative would need to pass an exam with top marks for knowledge; this would already mean that representatives were selected “undemocratically”.

Due to the major issues on hand due to the above-mentioned aspects, it is largely up to the expert to guide and direct the negotiation process.

The role of the expert was extremely important and decisive.

All parties agree that the expert has decisive influence on the negotiation process and the final outcome. The expert says that it is the employees’ responsibility to sign the final agreement and to decide what issues should be included.

The role of the expert is to act as a facilitator, to educate, consult, direct and influence the employees so that an agreement can stand the test of time. The

¹⁸ Free wording and interpretation of Article 3.1 of Council Directive 2001/86/EC of 8 October 2001

¹⁹ Free wording and interpretation of Article 3.1 of Council Directive 2001/86/EC of 8 October 2001

negotiation process as well as the final outcome is largely dependent on the abilities of the expert regarding the above-mentioned aspects.

It goes without saying that the lawyer, who is an expert, has superior knowledge in legislation and negotiation procedures and also has experience of similar agreements concluded in other companies. In many European countries the expert would naturally be elected from a local trade union which has a large body of knowledge and experience in these matters.

The role of trade unions

The trade unions provided the SNB expert with support at both the local and the international level in the form of knowledge and experience as well as interpretation of the legislation. This supporting role was very important in this case because the Elcoteq conversion was the first of its kind; there had been no examples prior to this and legislative matters required interpretation by the Finnish ministries.

The role of the trade union support group was to prepare the first drafts, to interpret the legislation, to support the expert in various questions and to draw up plans and strategies for the forthcoming negotiations.

The aim and intent of the employer had an affect on the content of the agreement.

The aim and also the operating philosophy of the company involved in the process had an influence on the outcome. In the case of Elcoteq the employer really intended to create a body that would be beneficial for the company as well as the employees. Whether this is a realistic aim or not – in the writer's opinion it could be – there is at least no major clash between the aim of the company and the aim of the employee. Only time will tell what the cooperation will achieve.

The aim of the employer in the Elcoteq case was to create a functional system where the substance of the work would bring communication to top management from the shop floor as well as communication from the management to the shop floor. This intention did affect the content of the agreement.

Time constraints and the need for an agreement played a decisive role.

The negotiations were planned to take six months and an agreement was to be reached during that time. Both parties agree that the most important aim was to reach an agreement. From the employer side it is beneficial to have an agreement; the secondary provisions are impractical, and arranging RB meetings in such circumstances could mean that the company was in constant ongoing negotiations on arrangements. On the employee side the same applies; it is better to have an agreement than to have none, for the same reasons.

The language differences had an impact on the interpretation and common understanding among SNB members and affected the work of the SNB.

For the employees, much of the work that they did was related to fine-tuning individual sentences in the employer's drafts and requests for agreement

content. This work was affected by the fact that the individual language versions were not absolutely equivalent. This caused much debate and extra work.

Furthermore, the translations of the simultaneous interpreters were not entirely flawless, and this made the work of the SNB more difficult.

The different traditions in the various countries had an impact on the content of the agreement.

In the Elcoteq case, the different traditions of personnel involvement in each country affected the content of the agreement, or at least the wishes of the SNB. This concerned minor details, however, such as the question of whether SNB members have the right to use other local employee representative input in their work and the necessary means of doing so. This wish was not explained to the employer because not all of the systems involved had a representation system based on trade unions.

The different legal backgrounds, representation policies and behaviour patterns that SNB members were used to in their respective home countries had an enormous impact on the final agreement. In particular, the different approaches to the board participation issue and to the substitute solution that was arrived at (regular information on the BD meetings) were due to a large extent to the different industrial relations traditions.

The different customs and culture had an impact on the work of the SNB.

There was consensus among all that the methods and customs in each country differed widely. It is difficult to say exactly how this affected the work of the SNB, but all of the persons interviewed said that it was an issue that gave rise to much reflection on culture and cultural differences in the various countries.

All parties agree that it is important that the agreement be negotiated: different companies, different needs and circumstances

All of the interviewees were of the opinion that negotiation is a good way to go about reaching an agreement on how the future RB work is to be conducted. Different companies and company employees can have different needs and wishes regarding the content of an agreement. The fact that the representatives got acquainted with the work of the new body in this way was also considered a good starting point for the work of the future RB.

9 The agreement

The employer wants to keep the agreement a confidential document, but there are certain items that can be mentioned. A general assessment is that it contains all the points mentioned in the SE directive, but does not include participation rights. The representative body convenes twice a year. According to one description, the agreement is a little above the standard rules laid down in the directive.

The arrangements do not change national involvement, and employee representatives will be chosen according to the respective regulations in each country.

The agreement does contain some provisions that guarantee that national cooperation procedures are not involved in the work of the RB. When a matter concerns one country alone and where a majority of national employee representatives decide to use information and consultation channels provided by national legislation the RB will not be involved in such negotiations.

On the agreement

The CEO is pleased that there is a sensible agreement that talks about sensible things, and provides sensible procedures. "Now it's up to the employees and the management to work on what the practice will be, what the spirit is in the discussions," he says.

9.1 Analysis of the agreement

The following conclusions can be made on the basis of Article 4.2 of the SE Employee Involvement Act and the standard rules laid down in the same legislation :

- (a) The scope of the agreement;
- (b) The composition, number of members and allocation of the seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;

-
- The RB consists of 13 members:
Finland 2, Sweden 1, Germany 1, Hungary 4, Estonia 5
 - The size of Elcoteq should warrant a committee of the RB.
-

- (c) The functions and the procedures for the information and consultation of the representative body;

-
- Competence: limited to questions concerning the SE itself and its subsidiaries in another member state or which exceed the powers of decision-making organs in a single member state.
 - The rights to information and consultation:
 - 1) the right to be informed and consulted
 - 2) the right to meet the competent organ of the SE at least once a year
 - 3) the right to discuss the progress of the SE

- 4) the right to receive the agenda for meetings of the board of directors or the management and supervisory organ + copies of all documents submitted to the general meeting.
- 5) the RB meeting will include information on developments, both economic and administrative.

- In exceptional circumstances the RB has the right to hold an internal meeting when this is urgently necessary.
- The RB has the right to meet without the presence of the members of the competent organ of the company.
- The RB is responsible for informing employee representatives about the matters discussed within the RB.
- The RB has the right to select an expert of its choice.
- The members of the RB have the right to receive education during working hours without reduction of their salary.
- The company will cover all costs.

(d) The frequency of meetings of the representative body;

- The Elcoteq RB will hold two meetings per year.
-

(e) The financial and material resources to be allocated to the representative body;

The Standard Rules provide the following:

In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities as well as the accommodation and travel expenses of members of the representative body and the select committee.

In compliance with these principles, the member states may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.

(f) If, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

An RB was established.

(g) If, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's board of administration or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;

No participation on the board was included.

- (h) The date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for this renegotiation.

According to an interview in the ETU magazine, there are some provisions in the agreement guaranteeing indirect participation. It is provided that all of the members of the RB have the right to receive all agendas of the company's management meetings and that the chairman of the SNB has the right to discuss the agenda with the Director of Personnel before the meeting. After the meeting the Director of Personnel reports the decisions taken at the management meeting. (Source ETU 4/2005).

General assessment

The Hungarian interviewees consider that the agreement is very similar to the existing EWC agreements they know, since participation on the board was not achieved. However, they are very satisfied with the enhanced list of issues to be consulted, and are especially proud of the special provisions which make information available before and after the board meetings. To sum up the achievements, they are content with the provisions ensuring information on the group level issues, which can duly complement the regular local information session on the plant level issues.

“In essence, an EWC was created. The main thing is European-level information. Of course we have no veto power on issues such as closures or relocation; we cannot block such moves. We won't have a decisive say in these issues, but we will be able to influence how these things are implemented. We have precedents of this in Pécs, where our sensible opinions were taken into consideration by the management.”

10 Experiences, analysis and the further development of Elcoteq SE

After the negotiations were completed, the extraordinary shareholders' meeting took the decision on the conversion on 27 October 2005, and the change of company form became effective on 1 November.

General conclusions

Generally the real reasons for Elcoteq's conversion to a SE was very vague during the whole process. Reference to a European identity does not sound very convincing in a situation where the company is actually significantly expanding its activities outside Europe. On 31.12.2006 more than half of the workforce was actually working outside Europe. The only significant expansion that has taken place in Europe is the establishment of a new plant in Romania in 2006; the inclusion of Romanian representatives in the RB is now underway.

The company did, however, stress that one of the reasons for conversion to a SE was that it makes it possible to change domicile within the EEA without dissolving the company. As was already indicated in the foreword of this report, Elcoteq SE announced in 2006 that it would be transferring its domicile to Luxembourg. The formal decisions on this transfer were taken in the spring of 2007 and they will become effective on 1.1.2008.

The company's activities have been drastically reduced in 2006-2007. The Lohja plant, which with more than 500 employees during the conversion process is the biggest in Finland, will be closed down in August 2007. On 4 April 2007 the company announced that 242 employees would be made redundant and that the information and consultation procedures had been finalised. The latter procedure also included an extraordinary meeting of the Working Committee of the Representative Body.

Elcoteq is not the only subcontractor to the big ICT companies that is relocating its activities outside Europe. Its weakness has been its dependence on several big companies. In 2000 92 % of Elcoteq's production had Nokia and Ericsson as customers; by 2006 the share of these customers had dropped to 66 %. The market for these companies is growing significantly outside Europe.

There are apparently several reasons behind the company's decision to transfer its domicile to Luxembourg. Luxembourg is known for its low taxes and business-friendly environment. However, studying Elcoteq's real motives with respect to the transfer exceeds the scope of the current study. Incidentally, according to the employee representatives, the transfer is not expected to change the actual operation of the company headquarters or the RB. The interesting question is whether this pattern will set a trend for SEs. It is worth noting that Elcoteq is still very clearly owned by Finnish citizens and also governed by them (the entire board with possibly one exception is Finnish).

These future prospects were not present in 2005 during the negotiations. Whether they were clearly in the minds of some board members is more difficult to estimate. The rapid process indicates that this kind of further strategy was kept as an option, at least as a possible scenario. This also shows that presence at board level could provide better insight for the

employees into the strategy of the company provided that the real discussions are not conducted outside the board.

Different actors, different experiences

When evaluating the process one must bear in mind that the different parties are in different positions. Elcoteq was a Finnish company and the Finnish trade union representatives had long-standing experience in negotiating with the management. It is therefore no surprise that both the Finnish trade union and management side regarded the outcome as acceptable and as the result of a compromise.

The Finnish trade unions were unable to repair the mistake they had made in failing to require representation on the board of directors or at another suitable level earlier, and they did not receive full support from their Estonian and Hungarian colleagues for this demand during the negotiations.

For the trade union representatives from other countries the situation was different. The Hungarian trade unionists were experienced as national trade unionists (mainly company representatives) and acted on the basis of their tradition and background. The Estonian representatives had no experience of trade union activities and were elected more or less in a procedure initiated and led by the employers (who needed to form an SNB). Their role could therefore not be very significant in the negotiating process.

Still, the common task and common interests in the negotiations created an atmosphere in which the SNB was able to form a negotiating team. In fact, all of the participants interviewed explained that they were quite happy with the outcome and that the process had taught them a great deal. It is probably necessary that cross-border trade union activities and co-operation between trade union and workers' representatives is very much a "learning-by-doing process". In that respect the negotiations within Elcoteq clearly had encouraging features. The collaborative and constructive atmosphere of the negotiations were confirmed by all parties on both sides.

The knowledge base for negotiations

The lack of knowledge in three respects really seems to have hampered the possibilities for the SNB to genuinely formulate its own strategy for negotiations with the employer:

First, the knowledge of what an SE is and how to negotiate and form a Representative Body (RB) was lacking from the outset in the case of almost all representatives. Although some guidance was given, it seems that the trade union expert played a very crucial role in the procedure. The choice of the expert was apparently reasonably successful in this case; all of the representatives seem to agree that he played a constructive role in forming the internal opinions within the SNB.

Second, the representatives knew nothing whatever about the different systems for worker representation, information and consultation in the other countries. Several internal problems in evaluating views and positions of others clearly had to do with this factor. The conclusion is that not only is education on the SE system important, but knowledge of the different traditions of trade union representation, bargaining and information and consultation in the countries involved is equally important.

Third, the employee representatives involved did not know each other. There had not been any EWC in the company previously, and there were no existing personal contacts or relationships of trust when the process started.

Better preparations are possible on all these points. Use of national or European possibilities for demanding representation on the board of administration of the company or the establishment of an EWC is one way to prepare for this. The other way is to educate experts; the Finnish trade unions had done their homework quite well in this respect.

The preconditions for cross-border cooperation

The study clearly shows the importance of fulfilling the necessary preconditions for an effective system of participation. The availability of legal expertise, the solving of the language question (interpretation) and the entitlement to direct contacts and information from the top management are all crucial preconditions for an efficient participatory system.

Results

The agreement on personnel representation that was achieved has been accepted by all parties as a decent result. It is therefore astonishing that the company is not willing to go public with this agreement. Here the Finnish company seems to be less open than many European corporations in spite of the fact that the company wants to present itself as a forerunner or one of the first SEs.

The employees think that the SNB process has enhanced cooperation between different units at both the national and the international level. One representative thinks that the negotiation process has contributed to cooperation on a larger scale between the different Elcoteq units. On the other hand it is easy to understand that cross-border participation and coordination has its limits in a company that seems to be undergoing constant restructuring and relocation.

All of this indicates that it really could be worthwhile to conduct a study on how SE participation works in the company. That study, however, goes beyond the narrow scope of the present report, which has endeavoured to give an account of how the Agreement on Personnel Representation of 17.8.2005 came about in order to fulfil the legal requirements of the present European legal regime.

Annex: The people involved in the process

The employer

Jouni Hartikainen, the Elcoteq CEO

Minna Aila, the Project Director, a lawyer in education

Virpi Virtanen, Personnel Manager of Elcoteq Finland

Agnes Hansen, Personnel Manager of Elcoteq Estonia, Master of Economics and Engineering

Rita Ásványi, European Human Resource Director, located in the new Budapest office, formerly head of HRM division at the Hungarian subsidiary in Pécs

Roni Jokinen, the second SNB expert participating in the main negotiations

The SNB

Finnish representatives

Merja Levonmäki, SNB representative, deals with claims; a laboratory assistant in education.

Ira Laitakari-Svärd, SNB representative and Chairman of the SNB; industrial designer, Master of Arts

Estonian representatives

Toomas Orutar, SNB representative, product line manager; studied at the Higher Economics University of Tallinn

Tonu Vaus, SNB representative, product line manager; studied at the Technical University of Tallinn

Ivan Nadejev, SNB representative, project technician; a student at Tallinn Technical University

Hungarian representatives

Szilvia Bognárné Mezei, SNB representative, president of the Works Council in the Hungarian subsidiary in Pécs; she used to work as a skilled worker but now works as a full-time representative.

István Németh, SNB representative, former trade union president in the Hungarian subsidiary in Pécs. In March 2005 he was elected Vice-President of the

Metalworkers' Union (Vasasszakszervezet); he then left Elcoteq and moved to Budapest.

Béla Novodárszky, SNB representative, trade union president in the Hungarian subsidiary in Pécs, member of the Presidium of the Metalworkers' Union (Vasasszakszervezet). He formerly worked as a semi-skilled worker and team leader, but is now a full-time representative.

László Pallós, SNB representative, vice-president of the Works Council. He is in charge of training in the Hungarian subsidiary in Pécs.

The Researcher

Tom Stenstrand, Research Assistant at the Swedish School of Economics and Business Administration

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Annex: The conversion plan

1. Converting company

Company: Elcoteq Network Corporation
Corporate ID: 0861051-6
Address: Sinimäentie 8B, 02630 Espoo, Finland
Legal domicile: Lohja

2. Background and general conditions for conversion

Elcoteq Network Corporation (hereafter the Company) is a public limited-liability company listed on the Helsinki Exchanges, established in accordance with Finnish legislation on 4 September 1991, and registered in the town of Lohja, Finland. The Company has its head office in the city of Espoo in Finland, address Sinimäentie 8B, 02630, Espoo. In order for a Finnish public limited-liability company to convert into a European limited-liability company ("Societas Europaea", hereafter SE) the company must, pursuant to paragraph 4, Article 2, of Council Regulation (EC) No. 2157/2001 on the Statute for a European Company (SE), have had a subsidiary operating for at least two years under the laws of another EU member state.

The converting company has owned the entire share capital of the following subsidiaries in the European Economic Area:

Trade Register transcripts of the subsidiaries:

Elcoteq Deutschland GmbH, a company established under German law, recorded in the trade register (Amtsgericht Überlingen, HRB 1423), holding of converting company, has been operating without interruption since 1 December 2000;

Elcoteq Elektronik GmbH, a company established under German law, recorded in the trade register (Amtsgericht Überlingen, HRB 1370), holding of converting company, has been operating without interruption since 27 January 2000;

Elcoteq Communications Technology GmbH, a company established under German law, recorded in the trade register (Amtsgericht Offenburg HRB 2276), holding of converting company, has been operating without interruption since 26 November 2003;

Elcoteq Sweden AB, a company established under Swedish law, recorded in the trade register (Bolagsverket, 556620-5539), holding of converting company, has been operating without interruption since 6 February 2002;

AS Elcoteq Tallinn, a company established under Estonian law, recorded in the trade register (Tallinn Linnakohtu registriosakonna 10092440), holding of converting company, has been operating without interruption since 16 March 1993;

Elcoteq Hungary Ltd., a company established under Hungarian law, recorded in the trade register (Pécs, 02-09-065805), holding of converting company, has been operating without interruption since 16 January 1998;

Immolease Kereskedelmi Kft., a company established under Hungarian law, recorded in the trade register (Pécs, 02-09-066384), holding of converting company, has been operating without interruption since 20 February, 1996;

Elcoteq Network S.A., a company established under Luxemburg law, recorded in the trade register (Registre de Commerce et des Sociétés, B 102654), holding of converting company, has been operating without interruption since 3 September 2004;

Elcoteq Finland Oy, a company established under Finnish law, recorded in the trade register (1820411-6), holding of converting company, has been operating without interruption since 26 March 2003;

Elcoteq Helsinki Oy, a company established under Finnish law, recorded in the trade register (468.058), holding of converting company, has been operating without interruption since 20 December 1989;

Elcoteq Lohja Oy, a company established under Finnish law, recorded in the trade register (649.189), holding of converting company, has been operating without interruption since 7 December 1995;

Elcoteq Design Center Oy, a company established under Finnish law, recorded in the trade register (1772804-9), holding of converting company, has been operating without interruption since 15 July 2002; and

Kiinteistöosakeyhtiö Salon Joensuunkatu 13, a company established under Finnish law, recorded in the trade register (566.389), holding of converting company, has been operating without interruption since 14 July 1993.

3. Company's statutory domicile

The Company's statutory registered office will remain in Lohja, Finland, during the conversion process.

4. Conversion

The Company will be converted into a public limited liability European company (Societas Europaea, hereafter "SE") pursuant to paragraph 4 of Article 2 and Article 37 of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (SE).

5. Reasons for conversion

The reasons for converting the Company into an SE are strategic. The SE form of incorporation will give the Company a strong pan-European identity. The Company operates globally and the aim is to strengthen its image as a pioneer and strong global company. Moreover, as an SE and in pace with the development of European company law, the Company will be able to enhance efficiency and achieve cost savings by merging its subsidiaries. The conversion will also provide flexibility in the event of future acquisitions and divestments.

A central purpose of changing the Company's form is to create an effective structural basis for continuously enhancing the Company's competitiveness.

5. SE's articles of association and statutes

The articles of association of Elcoteq Network SE are provided in Enclosure 2 of the conversion plan. Elcoteq Network SE's statutes comprise both this conversion plan and the appended articles of association.

6. Company name

Conversion will change the Company's name to Elcoteq Network SE.

7. Special benefits and rights applicable to the management and auditors of companies as a result of conversion

Under paragraph 8, section 4, chapter 14 of the Finnish Companies' Act the members of the boards, presidents and auditors of companies, or an authorised auditor acting as an independent expert, are not entitled to receive special benefits or rights. Joakim Rehn, who acts as an independent expert, is entitled to a fee based on an approved invoice.

8. SE's administrative structure

Following the conversion, the Company will comprise a one-tier system as defined in paragraph (b) of Article 38 of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (SE).

9. Board of directors, president and auditors

The Company has a Board of Directors comprising 4–8 members. The Company has a president who is appointed by the Board of Directors. The Company has an auditor who is required to be an auditing company authorised by the Central Chamber of Commerce.

9. Rights prescribed for the protection of shareholders and/or creditors

The rights of shareholders, option holders and convertible bond holders will remain unaltered by the conversion. The position of the Company's creditors will remain unaltered by the conversion.

10. Personnel

The rights and obligations related to the Company's conditions of employment and based on the national laws, practice and personal employment contracts and employment relationships valid on the conversion registration date will be transferred to the SE on the conversion registration date. The Company's personnel will continue to be employed in the SE on the same conditions as before the conversion.

11. Impact on employee representation

Employee representation will be based on the Finnish Act on Employee Involvement in a European Company (13.8.2004/758) and the provisions of Directive 2001/86/EC of the Council of Ministers of the European Union by forming a special negotiating body after the conversion plan is signed. The purpose of this body is to reach agreement with the competent body of the Company on how and on what conditions the Company's employees should be represented when the Company is granted SE status.

12. Registration of conversion plan

The conversion plan will be submitted without delay to the Trade Register for registration after it is signed.

13. Approval of the conversion plan and SE articles of association

The conversion plan and the articles of association of the SE will be approved by a general meeting of shareholders. A decision of a general meeting can be made at the earliest one month from the date on which the conversion plan is announced in the Trade Register.

14. Validity of conversion

The conversion will enter into force when the announcement concerning the completion of the conversion is registered. The announcement will contain the decision of the general meeting to approve the conversion plan and the articles of association of the SE, statement of the independent expert as well as the agreement between the Company and the special negotiating body.

Annex: Timeline and legal implications of the Elcoteq SE conversion

Timeline:

- 17 December 2003: Elcoteq's Board of Directors decided to start preparations for the conversion.
- 17 March 2004: the CEO informed the Annual General Meeting about these plans.
- 8 October 2004: EU legislation on the European Company form came into force and Elcoteq's Board approved the Conversion Plan and the Report by the Board.
- February-August 2005: negotiations on employee involvement with Elcoteq's European personnel.
- 7 September 2005: the Board of Directors decided to propose that the Extraordinary General Meeting approve the conversion into a European Company.
- 27 September 2005: decision by EGM to change the company form to SE
- 1 October 2005: adoption of new company form; name: Elcoteq SE

Legal implications

- Elcoteq will be registered in Finland's trade register after the conversion.
- The Company's home country will continue to be Finland and its statutory domicile Lohja.
- The Company's corporate identity code and VAT registration number will remain the same after the conversion.
- The head office of the European company must be located in the country where the Company is registered. When Elcoteq Network Corporation converts into a European company, its head office will remain in its current location in Espoo.
- The Company's conversion into a European Company does not affect its listing. If Elcoteq converts into a European Company, it will continue to be listed on the Helsinki Exchanges.
- Conversion into a European Company does not affect existing contracts and agreements, nor does it affect ownership or other rights.
- Converting the Company into a European Company will not affect employees' employment contracts. Employees will continue to be employees of the Company on the same terms and conditions as before conversion.

(Source: Report by the Board of Directors on converting Elcoteq Network into a European limited liability company, 8 Oct. 2004)

Annex: General terms and definitions

When a company decides to convert to a European Company one of the requirements is that an agreement for its employees must be negotiated amongst the converting company's/companies' affiliates within the European Economic Area. This negotiation is conducted through negotiation between the company management and a special negotiating body (SNB).

The objective of the special negotiating body (SNB) negotiations is to negotiate how the work and facilities of the future representative body (RB) will be arranged.

Terms and definitions relating to company transformation procedures

SE: Societea Europea, Latin for European company. The national legislation relating to the possibility for a European Economic Area (EEA) internal company to convert to a European Company came into force on 8 October 2004. The European Company follows the same rules and regulations as an ordinary company in the country where it is operating. The parent company in a conglomerate follows the rules and regulations of its domicile and head office.

Conversion = Transformation. There are five different ways of forming a European Company. One of them is conversion or transformation as it is also called in the legislation. This type of formation has been applied in the case of Elcoteq. Conversion is the term that will be used throughout this paper.

Participating Company: The transformation procedure affects the legal status of the Participating Company or companies involved in the transformation. In the case of Elcoteq, there was only one participating company, the parent company of the group.

Subsidiaries and concerned subsidiaries are the companies on which the SE exercises dominant influence. In the case of Elcoteq, subsidiaries in five different countries within the EEA were involved in the negotiations.

For more exact definitions: Council Directive 2001/86/EC (Employee involvement directive) Section 1 Article 2, Definitions.

Terms and definitions relating to the negotiations

SNB: Special Negotiating Body. The SNB is a body whose sole purpose is to agree how the future employee involvement will be organised. In standard terms this means that a representative body (RB) will have to be arranged in the company.

RB: Representative Body. This body is unique to European Companies; its function is to represent the employees from every country in which the company has activities within the EEA. It has a function similar to that of the European Works Council (EWC) and replaces that body if such a council has been organised prior to a company's conversion into an SE.

Standard rules: the directive for employee involvement 2001/86/EC contains standard rules for the work of an RB if agreement is not reached through

negotiations. In this work the term 'secondary provision' is sometimes used with the same meaning.

Involvement of employees means any mechanism, including information, consultation and participation through which employees can exert influence on decisions to be taken within the company.

Information means the informing of employees by the competent body of the company.

Consultation means the establishment of dialogue between the company and the representative body.

Participation means the influence of the body of representatives through the right to elect or appoint some of the members of the company's supervisory or administrative organ and the right to amend or to oppose the appointment of some or all members of the company's supervisory or administrative organ.

For more exact definitions see Council Directive 2001/86/EC (Employee involvement directive) Section 1 Article 2, Definitions.

Annex: Terms and definitions relating to personnel involvement systems in the various countries

Finland

Shop steward: Finnish employee representative. There is a chief steward for the establishment, a shop steward for every department and a substitute for the chief shop steward. The shop stewards are elected by the local trade union concerned. The shop steward is the representative of the local trade union at the workplace. (Source: Labour Law in Finland, 2000, p. 154)

Cooperation within Undertakings Act: Finnish law relating to institutionalised relations between employees and employer. Laki yhteistoiminnasta yrityksissä, Yhteistoimintalaki 'YT-laki' (725/1978)

Labour protection supervisor: for each workplace, the employer must appoint a labour protection supervisor to be responsible for cooperation in labour protection matters. Työsuojeluvaltuutettu. (Source: Labour Law in Finland, 2000, p. 154)

Labour protection representative: the employee representative on labour protection matters. Työsuojeluasiamies. (Source: Labour Law in Finland, 2000, p. 154)

Act on Labour Protection Supervision is the piece of legislation governing the work of the two representatives mentioned above. Työsuojelulaki 738/2002

Act on the Administrative Representation of Personnel: Laki henkilöstön edustuksesta yritysten hallinnossa 2003/725

Trade union confederations in Finland:

SAK: The Central Organisation of Finnish Trade Unions, a blue-collar worker trade union confederation. SAK is in principle open to all employees; on the other hand, the SAK considers itself part of the labour movement. SAK membership in 1997: 1 100 000. (Source: Labour Law in Finland, 2000, p. 139-142)

STTK: Confederation of Technical Employee Organisations in Finland, a white-collar trade union confederation. Membership in 1997: 637 000. (Source: Labour Law in Finland, 2000, p. 143)

Akava: Confederation of Unions of Academic Professionals in Finland, a white-collar trade union confederation. Membership in 1997: 347 000 (Source: Labour Law in Finland, 2000, p. 143)

Estonia

The Work Environment Council (committee): employee involvement in Estonia is largely arranged through a body where equal numbers of elected employer representatives and elected employee representatives meet to discuss work-related matters.

Hungary

Labour Code: (Act XII of 1992) regulates most individual and collective labour law issues, such as the operation of trade unions and works councils. There are separate laws, however, for board representation and employee representation in the SE.

Metal Workers' Union: (Vasasszakszervezet), an industry federation to which most of the company unions belong in the electronics industry. It belongs to MSZOSZ, the biggest union confederation in the private sector.

Company trade unions, shop stewards: shop stewards are elected at unionised Hungarian workplaces and they make up the companies' trade union committee. As a rule, company unions conclude collective agreements with the company management to regulate wages and terms and conditions of employment. Although there are also multi-employer and sectoral agreements, their coverage is limited.

Works councils are mandatory in Hungary. It is provided that employees elect them where the number of employees exceeds 50; a single representative with the same rights is elected if the number of employees is between 15 and 49.

Employee representatives on supervisory boards: according to company law, employee representatives delegated by the works council make up at least one-third of the supervisory board, if the company has more than 200 employees.

Annex: Council Directive 2001/86/EC of 8 October 2001

SUPPLEMENTING THE STATUTE FOR A EUROPEAN COMPANY WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES – OFFICIAL JOURNAL L 294 , 10/11/2001 P. 0022 - 0032

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the amended proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas:

(1) In order to attain the objectives of the Treaty, Council Regulation (EC) No 2157/2001 (4) establishes a Statute for a European company (SE).

(2) That Regulation aims at creating a uniform legal framework within which companies from different member states should be able to plan and carry out the reorganisation of their business on a Community scale.

(3) In order to promote the social objectives of the Community, special provisions have to be set, notably in the field of employee involvement, aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. This objective should be pursued through the establishment of a set of rules in this field, supplementing the provisions of the Regulation.

(4) Since the objectives of the proposed action, as outlined above, cannot be sufficiently achieved by the member states, in that the object is to establish a set of rules on employee involvement applicable to the SE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve these objectives.

(5) The great diversity of rules and practices existing in the member states as regards the manner in which employees' representatives are involved in decision-making within companies makes it inadvisable to set up a single European model of employee involvement applicable to the SE.

(6) Information and consultation procedures at transnational level should nevertheless be ensured in all cases of creation of an SE.

(7) If and when participation rights exist within one or more companies establishing an SE, they should be preserved through their transfer to the SE, once established, unless the parties decide otherwise.

(8) The concrete procedures of employee transnational information and consultation, as well as, if applicable, participation, to apply to each SE should be defined primarily by means of an agreement between the parties concerned or, in the absence thereof, through the application of a set of subsidiary rules.

(9) member states should still have the option of not applying the standard rules relating to participation in the case of a merger, given the diversity of national systems for employee involvement. Existing systems and practices of participation where appropriate at the level of participating companies must in that case be maintained by adapting registration rules.

(10) The voting rules within the special body representing the employees for negotiation purposes, in particular when concluding agreements providing for a level of participation lower than the one existing within one or more of the participating companies, should be proportionate to the risk of disappearance or reduction of existing systems and practices of participation. That risk is greater in the case of an SE established by way of transformation or merger than by way of creating a holding company or a common subsidiary.

(11) In the absence of an agreement subsequent to the negotiation between employees' representatives and the competent organs of the participating companies, provision should be made for certain standard requirements to apply to the SE, once it is established. These standard requirements should ensure effective practices of transnational information and consultation of employees, as well as their participation in the relevant organs of the SE if and when such participation existed before its establishment within the participating companies.

(12) Provision should be made for the employees' representatives acting within the framework of the Directive to enjoy, when exercising their functions, protection and guarantees which are similar to those provided to employees' representatives by the legislation and/or practice of the country of employment. They should not be subject to any discrimination as a result of the lawful exercise of their activities and should enjoy adequate protection as regards dismissal and other sanctions.

(13) The confidentiality of sensitive information should be preserved even after the expiry of the employees' representatives terms of office and provision should be made to allow the competent organ of the SE to withhold information which would seriously harm, if subject to public disclosure, the functioning of the SE.

(14) Where an SE and its subsidiaries and establishments are subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, the provisions of that Directive and the provision transposing it into national legislation should not apply to it nor to its subsidiaries and establishments, unless the special negotiating body decides not to open negotiations or to terminate negotiations already opened.

(15) This Directive should not affect other existing rights regarding involvement and need not affect other existing representation structures, provided for by Community and national laws and practices.

(16) member states should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.

(17) The Treaty has not provided the necessary powers for the Community to adopt the proposed Directive, other than those provided for in Article 308.

(18) It is a fundamental principle and stated aim of this Directive to secure employees' acquired rights as regards involvement in company decisions. Employee rights in force before the establishment of SEs should provide the basis for employee rights of involvement in the SE (the "before and after" principle). Consequently, that approach should apply not only to the initial establishment of an SE but also to structural changes in an existing SE and to the companies affected by structural change processes.

(19) member states should be able to provide that representatives of trade unions may be members of a special negotiating body regardless of whether they are employees of a company participating in the establishment of an SE. member states should in this context in particular be able to introduce this right in cases where trade union representatives have the right to be members of, and to vote in, supervisory or administrative company organs in accordance with national legislation.

(20) In several member states, employee involvement and other areas of industrial relations are based on both national legislation and practice which in this context is understood also to cover collective agreements at various national, sectoral and/or company levels,

HAS ADOPTED THIS DIRECTIVE:

SECTION I. GENERAL

Article 1

Objective

1. This Directive governs the involvement of employees in the affairs of European public limited-liability companies (Societas Europaea, hereinafter referred to as "SE"), as referred to in Regulation (EC) No 2157/2001.

2. To this end, arrangements for the involvement of employees shall be established in every SE in accordance with the negotiating procedure referred to in Articles 3 to 6 or, under the circumstances specified in Article 7, in accordance with the Annex.

Article 2

Definitions

For the purposes of this Directive:

(a) "SE" means any company established in accordance with Regulation (EC) No 2157/2001;

(b) "participating companies" means the companies directly participating in the establishing of an SE;

(c) "subsidiary" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC;

(d) "concerned subsidiary or establishment" means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation;

(e) "employees' representatives" means the employees' representatives provided for by national law and/or practice;

(f) "representative body" means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE;

(g) "special negotiating body" means the body established in accordance with Article 3 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;

(h) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;

(i) "information" means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another member state or which exceed the powers of the decision-making organs in a single member state at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE;

(j) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE;

(k) "participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:

- the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
- the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

SECTION II. NEGOTIATING PROCEDURE

Article 3

Creation of a special negotiating body

1. Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE. 2. For this purpose, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created in accordance with the following provisions:

(a) in electing or appointing members of the special negotiating body, it must be ensured:

(i) that these members are elected or appointed in proportion to the number of employees employed in each member state by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a member state one seat per portion of employees employed in that member state which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the member states taken together;

(ii) that in the case of an SE formed by way of merger, there are such further additional members from each member state as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company which is registered and has employees in that member state and which it is proposed will cease to exist as a separate legal entity following the registration of the SE, in so far as:

- the number of such additional members does not exceed 20 % of the number of members designated by virtue of point (i), and
- the composition of the special negotiating body does not entail a double representation of the employees concerned.

If the number of such companies is higher than the number of additional seats available pursuant to the first subparagraph, these additional seats shall be allocated to companies in different member states by decreasing order of the number of employees they employ;

(b) member states shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories. They shall take the necessary measures to ensure that, as far as possible, such members shall include at least one member representing each participating company which has employees in the member state concerned. Such measures must not increase the overall number of members.

member states may provide that such members may include representatives of trade unions whether or not they are employees of a participating company or concerned subsidiary or establishment.

Without prejudice to national legislation and/or practice laying down thresholds for the establishing of a representative body, member states shall provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.

3. The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE.

To this end, the competent organs of the participating companies shall inform the special negotiating body of the plan and the actual process of establishing the SE, up to its registration.

4. Subject to paragraph 6, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two member states,

- in the case of an SE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating companies, or

- in the case of an SE to be established by way of creating a holding company or forming a subsidiary, if participation covers at least 50 % of the overall number of employees of the participating companies.

Reduction of participation rights means a proportion of members of the organs of the SE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating companies.

5. For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

6. The special negotiating body may decide by the majority set out below not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the member states where the SE has employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 4. Where such a decision has been taken, none of the provisions of the Annex shall apply. The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in at least two member states. In the case of an SE established by way of transformation, this paragraph shall not apply if there is participation in the company to be transformed.

The special negotiating body shall be reconvened on the written request of at least 10 % of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after the above-mentioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Annex shall apply.

7. Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, member states may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

Article 4

Content of the agreement

1. The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.

2. Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 between the competent organs of the participating companies and the special negotiating body shall specify:

(a) the scope of the agreement;

(b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;

(c) the functions and the procedure for the information and consultation of the representative body;

(d) the frequency of meetings of the representative body;

(e) the financial and material resources to be allocated to the representative body;

(f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;

(h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

3. The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Annex.

4. Without prejudice to Article 13(3)(a), in the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE.

Article 5

Duration of negotiations

1. Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.

2. The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year from the establishment of the special negotiating body.

Article 6

Legislation applicable to the negotiation procedure

Except where otherwise provided in this Directive, the legislation applicable to the negotiation procedure provided for in Articles 3 to 5 shall be the legislation of the member state in which the registered office of the SE is to be situated.

Article 7

Standard rules

1. In order to achieve the objective described in Article 1, member states shall, without prejudice to paragraph 3 below, lay down standard rules on employee involvement which must satisfy the provisions set out in the Annex.

The standard rules as laid down by the legislation of the member state in which the registered office of the SE is to be situated shall apply from the date of the registration of the SE where either:

(a) the parties so agree; or

(b) by the deadline laid down in Article 5, no agreement has been concluded, and:

- the competent organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE, and

- the special negotiating body has not taken the decision provided in Article 3(6).

2. Moreover, the standard rules fixed by the national legislation of the member state of registration in accordance with part 3 of the Annex shall apply only:

(a) in the case of an SE established by transformation, if the rules of a member state relating to employee participation in the administrative or supervisory body applied to a company transformed into an SE;

(b) in the case of an SE established by merger:

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25 % of the total number of employees in all the participating companies, or

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25 % of the total number of employees in all the participating companies and if the special negotiating body so decides,

(c) in the case of an SE established by setting up a holding company or establishing a subsidiary:

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50 % of the total number of employees in all the participating companies; or

- if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 50 % of the total number of employees in all the participating companies and if the special negotiating body so decides.

If there was more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms must be established in the SE. member states may fix the rules which are applicable in the absence of any decision on the matter for an SE registered in their territory. The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to this paragraph.

3. member states may provide that the reference provisions in part 3 of the Annex shall not apply in the case provided for in point (b) of paragraph 2.

SECTION II I. MISCELLANEOUS PROVISIONS

Article 8

Reservation and confidentiality

1. member states shall provide that members of the special negotiating body or the representative body, and experts who assist them, are not authorised to reveal any information which has been given to them in confidence.

The same shall apply to employees' representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office.

2. Each member state shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the supervisory or administrative organ of an SE or of a participating company established in its territory is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SE (or, as the case may be, the participating company) or its subsidiaries and establishments or would be prejudicial to them.

A member state may make such dispensation subject to prior administrative or judicial authorisation.

3. Each member state may lay down particular provisions for SEs in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in the national legislation.

4. In applying paragraphs 1, 2 and 3, member states shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SE or participating company demands confidentiality or does not give information.

Such procedures may include arrangements designed to protect the confidentiality of the information in question.

Article 9

Operation of the representative body and procedure for the information and consultation of employees.

The competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

The same shall apply to cooperation between the supervisory or administrative organ of the SE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

Article 10

Protection of employees' representatives

The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 4(2)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating company or the SE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

Article 11

Misuse of procedures

member states shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

Article 12

Compliance with this Directive

1. Each member state shall ensure that the management of establishments of an SE and the supervisory or administrative organs of subsidiaries and of participating companies which are situated within its territory and the employees' representatives or, as the case may be, the employees themselves abide by the obligations laid down by this Directive, regardless of whether or not the SE has its registered office within its territory.

2. member states shall provide for appropriate measures in the event of failure to comply with this Directive; in particular they shall ensure that administrative or legal procedures are available to enable the obligations deriving from this Directive to be enforced.

Article 13

Link between this Directive and other provisions

1. Where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Directive 94/45/EC or of Directive 97/74/EC extending the said Directive to the United Kingdom, the provisions of these Directives and the provisions transposing them into national legislation shall not apply to them or to their subsidiaries.

However, where the special negotiating body decides in accordance with Article 3(6) not to open negotiations or to terminate negotiations already opened, Directive 94/45/EC or Directive 97/74/EC and the provisions transposing them into national legislation shall apply.

2. Provisions on the participation of employees in company bodies provided for by national legislation and/or practice, other than those implementing this Directive, shall not apply to companies established in accordance with Regulation (EC) No 2157/2001 and covered by this Directive.

3. This Directive shall not prejudice:

(a) the existing rights to involvement of employees provided for by national legislation and/or practice in the member states as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;

(b) the provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SE.

4. In order to preserve the rights referred to in paragraph 3, member states may take the necessary measures to guarantee that the structures of employee representation in participating companies which will cease to exist as separate legal entities are maintained after the registration of the SE.

Article 14

Final provisions

1. member states shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 8 October 2004, or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the member states being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When member states adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the member states.

Article 15

Review by the Commission

No later than 8 October 2007, the Commission shall, in consultation with the member states and with management and labour at Community level, review the procedures for applying this Directive, with a view to proposing suitable amendments to the Council where necessary.

Article 16

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 17

Addressees

This Directive is addressed to the member states.

Done at Luxembourg, 8 October 2001.
For the Council
The President
L. Onkelinx

Annex: Standard Rules

(referred to in Article 7)

Part 1: Composition of the body representative of the employees In order to achieve the objective described in Article 1, and in the cases referred to in Article 7, a representative body shall be set up in accordance with the following rules.

(a) The representative body shall be composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

(b) The election or appointment of members of the representative body shall be carried out in accordance with national legislation and/or practice. member states shall lay down rules to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SE and its subsidiaries and establishments.

(c) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.

(d) The representative body shall adopt its rules of procedure.

(e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each member state by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a member state one seat per portion of employees employed in that member state which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the member states taken together.

(f) The competent organ of the SE shall be informed of the composition of the representative body.

(g) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 4 and 7 or to continue to apply the standard rules adopted in accordance with this Annex.

Articles 3(4) to (7) and 4 to 6 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 4, in which case the term "special negotiating body" shall be replaced by "representative body". Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

Part 2: Standard rules for information and consultation

The competence and powers of the representative body set up in an SE shall be governed by the following rules.

(a) The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another member state or which exceed the powers of the decision-making organs in a single member state.

(b) Without prejudice to meetings held pursuant to point (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects. The local managements shall be informed accordingly.

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

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement.

In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

The meetings referred to above shall not affect the prerogatives of the competent organ.

(d) member states may lay down rules on the chairing of information and consultation meetings. Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with the third subparagraph of paragraph (c), shall be entitled to meet without the representatives of the competent organ being present.

(e) Without prejudice to Article 8, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

(f) The representative body or the select committee may be assisted by experts of its choice.

(g) In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.

(h) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

In compliance with these principles, the member states may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.

Part 3: Standard rules for participation

Employee participation in an SE shall be governed by the following provisions (a) In the case of an SE established by transformation, if the rules of a member state relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. Point (b) shall apply *mutatis mutandis* to that end.

(b) In other cases of the establishing of an SE, the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation. The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various member states or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each member state. If the employees of one or more member states are not covered by this proportional criterion, the representative body shall appoint a member from one of those member states, in particular the member state of the SE's registered office where that is appropriate. Each member state may determine the allocation of the seats it is given within the administrative or supervisory body.

Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.