



SEEurope - Worker participation at board level in the European Company (SE) -  
A project of the European Trade Union Institute (ETUI)

## **Case Study Report on Strabag SE**

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## **ABBREVIATIONS**

SE	Societas Europaeae
CEE countries	Central and Eastern European Countries
AG	'Aktiengesellschaft' – PLC
FIMAG	'Finanzmanagement-AG', name of the former holding of Strabag SE
ArbVG	'Arbeitsverfassungsgesetz' – Austrian Labour Constitution Act
EWC	European Works Council
SE WC	SE Works Council
IG BAU	'Industriegewerkschaft Bauen Agrar Umwelt' – German Building Industry Trade Union
DG	Directorate General
SNB	Special Negotiating Body
RB	Representative Body
GPA	'Gewerkschaft der Privatangestellten' – Union of Salaried Private-Sector Employees
EFBWW	European Federation of Building and Wood Workers
GBH	'Gewerkschaft Bau/Holz' – Austrian Trade Union for Building and Woodworking
AK	'Arbeiterkammer' – Austrian Chamber of Labour
EEA	European Economic Area
ACV	'ACV Bouw en Industrie/CSC Bâtiment et Industrie' – Belgian Building-Industry Trade Union

## **PRELIMINARY REMARK**

Norbert Kluge, European Trade Union Institute and chairman of the SEEUROPE project

At the outset it is important for readers to consider the character of the text: in such a case total objectivity is extremely difficult. Inevitably, the authors present their own interpretation and analysis with a view to opening people's eyes to the difficulties, but also the opportunities and successes of those involved in SE negotiations. Participants in the events described will hopefully forgive us if we do not satisfy them in every detail. Our intention is to provide an interpretation that is both informative and provocative, stimulating further debate on how such processes can be improved. We would like to thank all those who took the trouble to answer our questions and to read our draft both for their understanding and the stimulus for further reflection they provided.

## **FOREWORD BY THE AUTHOR**

This case study describes the process of establishing and reaching agreement on employee involvement in the course of the conversion of Bauholding Strabag AG into a European Company. Its aim is to take into account the different perspectives of employees' representatives, trade unionists and management representatives from the companies and countries concerned.

The study's information sources include the company's annual reports, coverage of the conversion in newspapers and trade journals, expert opinions and grey literature available from the social partners and their networks. Face-to-face interviews were conducted with a legal expert of the Austrian Chamber of Labour, a trade union official responsible for international affairs in the GPA (white-collar union), the current chair of the SE Works Council (SEWC), a member of the Strabag SE supervisory board and the chair of the Austrian Central Works Council. Additionally, questionnaires were sent to all members of the Special Negotiating Body (SNB) and answered by the German, Czech and Belgian members.

The management of Strabag SE declined our request for an interview, referring us to the chair of the works council, who is trusted to speak for the management as well.

## **1. BACKGROUND INFORMATION**

### **1.1. Sector and business activities**

Strabag SE is a multinational building and construction company with annual revenues of about €11.5 billion. It operates in three areas: Building Construction and Civil Engineering; Road Construction; and Tunnelling and Services. Strabag SE's principal entity is Strabag, which is active in all sectors of the construction industry. Other important brands are Züblin, DYWIDAG and Heilit+Wörner.

The most important markets for Strabag SE are Austria, Germany, Hungary and the Czech Republic, which account for around three quarters of the company's construction activity (Strabag SE 2006: 24). Another 14% takes place in other CEE countries, while other European markets account for 6%, and markets outside Europe contribute the remaining 6%. Economic growth in recent years is primarily owing to increasing building activity in CEE countries (Strabag SE 2006: 24).

Strabag SE operates in more than 500 locations worldwide (including all subsidiaries and affiliated companies). In 2006, Strabag SE had 52,971 employees; in 2004, the year of SE registration, the company employed 33,287 people. This staff increase is partly the result of major acquisitions in Germany in 2005.

In 2006, 32% of employees were in CEE countries. The proportion of personnel in Strabag's originating countries, Austria and Germany, decreased from 56% in 2004 to 48% in 2006.

### **1.2. Corporate governance structure**

The structure of Strabag SE's corporate group has changed significantly in recent years and particularly since 2004. Before SE registration, FIMAG was the parent company of the wholly owned subsidiaries Bauholding Strabag AG, A-Way Holding und Finanz AG and other service companies (Bauholding Strabag AG 2003: 2). Bauholding Strabag AG itself was the controlling shareholder of companies and raw material providers in Germany (Strabag AG Cologne), the Benelux countries, Austria and elsewhere.

SE registration concerns Bauholding Strabag AG, which was converted into Bauholding Strabag SE. The corporate structure will remain as it is for the time being.

In 2005, Bauholding Strabag SE changed its name to Strabag SE. In 2006, the former parent company FIMAG merged with Strabag SE (downstream merger). Strabag SE became the parent company of the group. In the same year, Strabag SE took over major parts of the German Walter-Bau Group.

In 2006, the group had 241 fully consolidated subsidiaries and a further 278 unconsolidated subsidiaries (Strabag SE 2006: 74).

Strabag SE has not been a listed company since July 2003. Shares in the company are owned by a group of shareholders around Hans Peter Haselsteiner (50% + 1 share) and the Austrian Raiffeisen group. In April 2007, the Russian Rasperia Trading Ltd joined as a major investor (equity holding of 30%). In September 2007, Haselsteiner announced the IPO for October 2007 (Der Standard, 27 September 2007).

The company seat is in Spittal an der Drau, Austria.

### **1.3. Employee board-level representation prior to and after transformation**

Strabag Bauholding SE was formed by conversion.

Bauholding Strabag AG had a two-tier corporate governance structure and this remained the same in Bauholding Strabag SE. In June 2004, the management board had six members, while the supervisory board consisted of 12 members: four were delegates from the works council (pursuant to the Austrian Labour Constitution Act – ArbVG – a third of supervisory board seats are to be taken by employee representatives).

By the end of 2004, the supervisory board had nine members, three of them delegated by the works council. The size and composition of the management board has not changed.

By 2007, the management board had been extended by two more members from Germany. The supervisory board had been reduced to eight members, three of them workers' representatives.

Strabag Bauholding SE was constructed as a kind of holding company; the composition of the boards of the subsidiaries was not affected, according to information provided by our interviewees.

### **1.4. Motives and business expectations behind setting up the SE**

The motives and business expectations behind the SE registration are not clear-cut.

In the letter from the management to the EWC chair, the registration is called a 'marketing strategy measure' ('Marketingstrategiemaßnahme', EWC letter 2004). In an interview a legal expert of the Austrian Chamber of Labour, who was involved in the process described below, called the company's registration as the *first* SE a 'marketing ploy'. Strabag's CEO confirms that the aim of being the *first* registered SE was indeed part of a marketing strategy (Wiener Zeitung,

13 October 2004). However, he considered the establishment of a European identity more important. This reason is also stated in the annual report (FIMAG 2004: 3).

*Der Standard* (October 13, 2004) reports cost reductions through the reduction of the number of subsidiaries and the facilitation of mergers as other reasons for registration. Other reasons include a solid and uniform group structure; simplification of pan-European activities; improved efficiency and competitiveness; EU-wide legal acceptance; facilitating the attraction of capital for cross-border projects; and simplification of cross-border mergers and transfer of the company's seat (Schwimbersky 2007: 81).

## **2. THE PROCESS OF ESTABLISHING AND AGREEING ON EMPLOYEE INVOLVEMENT**

### **2.1. Events before the official process of employee involvement**

The conditions for SE registration are laid down in two pieces of legislation: the Regulation on the Statute for a European Company (SE) (EC 2157/2001) and the Directive supplementing the Statute for a European Company with regard to the involvement of employees (2001/86/EC). In this study they are referred as the 'SE Regulation' and the 'SE Directive'.

The SE Directive stipulates a written agreement on the involvement of employees which is to be negotiated between the company's management and the Special Negotiating Body (SNB). The SNB consists of employees representing the companies concerned. Each country has to be represented by at least one SNB member. The negotiated agreement has to fulfil some minimum requirements laid down by the SE Directive concerning, for example, the composition, number of members and allocation of seats on the representative body (RB), the functions and procedure for the information and consultation of the RB and the number of employee board members, the procedure for their election or nomination and their rights.

As the process of establishing and agreeing on employee involvement in the Strabag case was not straightforward or pursuant to the SE Directive, we shall briefly outline the most important prior events. Details of these events are also described extensively by Pohl (2005), Gagawczuk (2004) and Cilento (2007). A summary timeline of the events can be found in the Annex.

Bauholding Strabag AG's management drew up a written agreement on employee involvement and submitted it for signature to the chair of the EWC in August 2004. The agreement stated that the existing agreement between Bauholding Strabag AG and the EWC would serve unaltered as the new agreement between employees' representatives and Bauholding Strabag SE, and that the participation provisions in force for Bauholding Strabag AG will also be applicable to the SE. While the other European members were notified by the EWC, the chair of the EWC did not wait for their official reaction or statement and signed the agreement. Obviously, there was no EWC meeting or internal decision about the acceptance of the proposed agreement.

This procedure was clearly not in line with the SE legislation concerning transnational employee involvement (see Gagawczuk 2004: 5): for several reasons, the EWC cannot be seen as a legal substitute for a Special Negotiating Body (SNB) pursuant to the SE Directive, one being that the EWC's composition did not reflect the legally required composition of the SNB.

As there was no SNB, there cannot be 'an agreement between the parties concerned' (SE Directive, Recital (8)) or a decision pursuant to Article 3(6) of the SE Directive. A legal expert (ibid.) concluded that as 'no agreement

between the SNB and the competent organs of the participating companies has been concluded' (ibid.: 6), the standard rules would apply. However, no SNB was constituted and the standard rules were not implemented. The chosen process is therefore not in accordance with the Directive and so the requirements for SE registration were not met.

As there was no SNB, there was no valid agreement on employees' participation in the supervisory board. In practice, after SE registration the former employee delegates were simply transferred to the SE supervisory board (Pohl 2005).

The German EWC members passed on the notification of the EWC agreement to the German IG BAU trade union. IG BAU informed the European Building and Wood Workers' Federation (EFBWW) as well as the partner trade unions in the European countries concerned, among them the Union of Salaried Private Sector Employees (Gewerkschaft der Privatangestellten (GPA)). The Austrian Trade Union for Building and Woodworking (Gewerkschaft Bau/Holz (GBH)) was also informed by the EFBWW. By mutual agreement between the GBH and the GPA, the latter took the lead in the ensuing process.

The Austrian trade unions and the Austrian Chamber of Labour (Arbeiterkammer (AK)) formed a kind of task force to discuss further steps. The German IG BAU communicated that they would take legal action against the registration.

IG BAU, the Belgian ACV-bouwen Industrie (ACV), the Belgian Strabag works council and the Austrian Chamber of Labour hired an external advocate who officially notified the judge of the critical state of affairs. Nevertheless, the SE was registered as planned on 12 October 2004.

After this, a joint complaint against the registration was lodged with the Higher Court by the same actors (Cilento 2007: 33). Furthermore, IG BAU contacted the European Commission's DG Employment and Social Affairs on the issue. The DG then asked Strabag for an official statement concerning the complaint.

In the meantime, the management of Bauholding Strabag AG seemed to realise that the registration of the SE might be on shaky ground. The acquisitions of three major German building companies in 2005 are reported to have been the final trigger for the management's agreement on the constitution of an SNB. In the course of the acquisition negotiations, German trade unions offered to put the complaint at the Higher Court on hold if an SNB was set up. The management agreed.

## 2.2. Preparations for the negotiations

### 2.2.1. Establishment and composition of the SNB

The SNB was set up by the management. All relevant locations were invited to delegate employees' representatives. The constituting meeting of the SNB took place on 9 November 2005. According to the SE Directive, negotiations have to be finalised within six months of the SNB's constituting meeting. This set the deadline for an agreement at 9 May 2006.

The seats in the SNB were allocated in accordance with the SE Directive as shown in the following table.

Country	Total number of employees	Proportion of total staff in %	Seats in SNB
Austria	11,156	34.14	4
Germany	8,539	26.13	3
Hungary	4,208	12.88	2
Czech Republic	3,837	11.74	2
Slovakia	2,032	6.22	1
Poland	2,241	6.86	1
Belgium	521	1.59	1
Slovenia	92	0.28	1
Netherlands	38	0.12	0; represented by Belgian colleagues
Italy	18	0.06	0; represented by Austrian colleagues
<b>TOTAL</b>	<b>32,682</b>	<b>100.00</b>	<b>15</b>

Note: Seats on the SNB were allocated according to countries' shares in total personnel (Cilento 2007).

All delegates attended the constituting meeting. In addition to the SNB members, the legal expert from Austria, two representatives of the Austrian trade unions (GPA, GBH) and one representative of the EFBWW also attended the meeting. The SNB members elected the chairman of the Austrian group works council as chair.

### 2.2.2. Preparatory meetings

An important feature of the SNB's preparatory work was a three-day seminar in January for all SNB members, which was managed by the EFBWW in

coordination with the Austrian Chamber of Labour and the Austrian trade unions.

The main aim of the seminar was to draw up a common proposal for an agreement to present at the first negotiation round. The seminar was attended by the SNB members, some of whom were accompanied by legal advisors or trade unionists.

An initial proposal for an agreement with the management was discussed paragraph by paragraph. Significantly differing views had arisen between Germans and Austrians on the issue of supervisory board participation: while the former were eager to have a seat on the board, the latter knew that Strabag's management would not agree to this (see also section 2.3.3).

The SNB decided that the negotiations should be led by a core team of the SNB. This consisted of two Austrian and two German employee representatives.

### **2.2.3. Role of trade unions at national and EU level**

The Austrian trade union GPA and the Austrian Chamber of Labour were responsible for the organisation and the agenda of the preparatory seminar.

The legal expert opinion by the external advocate was financed by the German, Belgian and Austrian trade unions and the Austrian Chamber of Labour.

The EFBWW organised the funding of the preparatory seminar under budget line 04.03.03.03 'Information, consultation and participation of representatives of undertakings' of DG Employment, Social Affairs and Equal Opportunities.

An EFBWW representative joined the constituting meeting of the SNB, alongside Austrian and German trade unionists.

### **2.2.4. Use of experts**

The external advocate worked out the initial proposal of the agreement (together with the expert on international affairs of the GPA and a legal expert from the Austrian Chamber of Labour). She also supported the chair of the negotiation team and the core team in the course of the negotiations.

German SNB members were accompanied and advised by a legal expert who was given the mandate of the German trade union and therefore had an official seat on the SNB.

### **2.2.5. Use of sectoral guidelines**

No sectoral guidelines were used in the preparation of the negotiations.

## **2.3. Negotiations**

### **2.3.1. Course and conduct of the negotiations**

A first round of negotiations was attended by, among others, Strabag's CEO, the human resources manager and the SNB core team.

After this, the first months passed with hardly any negotiations. In April 2006, negotiations were taken up more seriously and included two or three meetings with Hans Peter Haselsteiner. Negotiations were led rather informally by the chair of the SNB and Ebner. The course of the negotiations was reported to Haselsteiner. The chair of the works council was in constant consultation with the German members of the SNB core team as they were most affected by the disputed additional arrangement (see 2.3.2). In legal matters, he was supported by an external legal expert.

'Time was on our side', the chair of the works council said, referring to the time frame set by the SE Directive and the fact that if the deadline was reached without a result, the Standard Rules would have applied, something which Haselsteiner wanted to avoid.

After the final agreement was drafted, it was translated into all relevant languages and e-mailed to the SNB members, who had two weeks to propose any changes. On 4 May 2006, the full SNB met again and signed the agreement.

### **2.3.2. Initial draft agreement**

The initial SNB draft was as follows (in its main points, based on the translation by Cilento 2007):

## **1. General**

### *Field of application*

All Strabag SE companies in member states of the European Union, the EEA, Switzerland and all countries that are in the course of accession negotiations with the European Union. The agreement is applicable to all Strabag SE companies and their employees and all their subsidiaries within the meaning of §176 ArbVG.

The information and consultation agreements do not affect national regulations concerning information and consultation issues unless they are improved upon.

*Term of office of SEWC* 4 years

## **2. Composition of the body ('SE Works Council')**

<i>Number of members</i>	<p>Based on a minimum of 100 employees per member state, one seat is allocated per portion of employees employed in the Member State at Strabag or its subsidiaries, which equals 10% or a fraction thereof.</p> <p>If the structure of an SE changes significantly, the composition of the SEWC must be changed accordingly.</p> <p>Every full member has a deputy with the same rights, but who attends meetings only if the full member is not present.</p> <p>The delegation of members has to be conducted according to national law in the country concerned. If there is no legal regulation on delegation, a ballot of the workforces concerned is necessary.</p>
<i>Trade unionists or experts as members</i>	No.
<i>Select committee</i>	Composed of the chair and other members of the works council. Can meet according to need but a minimum of twice a year. Other works council members can participate if issues that affect them are discussed.
<i>Chair of body</i>	SEWC members elect the chair and his or her deputy or deputies from the SEWC.

### **Powers and information and consultation procedures**

<i>Definition of competences and information and consultation rights</i>	<p>In order to be informed and consulted, the SEWC needs continuous and comprehensive information to enable it to take part in shaping open decisions. For this purpose, information and consultation of the SEWC must be timely so that the position it develops can be incorporated into the management decision-making process.</p> <p>If extraordinary circumstances arise, the SEWC is to be informed as soon as possible. The SEWC has the right to meet the bodies of Strabag SE that have decision-making power as regards the issues concerned and to make its position known.</p>
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If the responsible bodies of Strabag SE decide to act in a way that is not in accordance with the views of the SEWC, the latter has the right to another meeting in order to come to an agreement.

*Definition of procedures*

The chair of the select committee and the board of directors agree on the dates of meetings, which are announced to other SEWC members at least two months in advance. The agenda is set by the chair of the select committee at least three weeks in advance. Meetings are to be simultaneously translated into all the languages of the participants; relevant documents are also to be translated.

The responsible organ of Strabag SE submits the agenda of all meetings to the board of directors and the supervisory board, and also provides copies of all documents relating to the shareholders' meeting to the SEWC.

*Content of information and consultation*

Structure, economic and financial situation; probable development of the business, and of production and sales; employment situation and prospective developments; investments; substantial changes concerning organisation; introduction of new working methods and production processes; plans for rationalisation; issues of health and safety at the workplace; environmental issues; relocations, acquisitions, mergers, de-mergers, downsizing or closures of sites or important parts thereof; collective redundancies; any other issues of economic, social, health or cultural interest to the employees.

*Information for employees at national level*

Yes. The SEWC is obliged to pass on information about the results of information and consultation procedures to employee representatives at national level.

*Use of experts*

The SEWC may be supported by experts of its choice at meetings.

**Meetings**

*Meetings (with Strabag SE representative for information and*

Right to meet twice a year. Additional meetings in case of extraordinary events. Information on meetings and their contents for national

<i>consultation)</i>	representatives. Date of meetings to be announced two months in advance; agenda to be fixed three weeks in advance by chair of body. Every member has the right to add points to the agenda.
<i>Extraordinary meetings</i>	Yes, in case of extraordinary events (see above).
<i>Preparatory and follow-up meetings</i>	Yes.
<i>Further internal meetings</i>	Select Committee meets according to need, but at least twice a year.

### **Other**

<i>Costs</i>	Covered by Strabag SE: costs of communication, organisation and administration of meetings, including costs of interpretation, translation of documents, accommodation and travel, as well as costs of experts and of external expert opinions needed for exercising the mandate. Attendance at all meetings (including preparatory and follow-up meetings, meetings of the select committee) is treated as working time and accounted as a business trip.
<i>Time off for duties and training</i>	Costs and time off for a total of 14 training days are covered per member per term of office. Costs covered also include travel, accommodation and fees.
<i>Internal communication structures and facilities</i>	Not mentioned, apart from the information duty to national representatives.

### **3. Board participation**

<i>General</i>	<p>In case of changes in the corporate structure, board participation must be renegotiated. In such a case the rights of the SNB are to be exercised by the SEWC.</p> <p>Agreed participation rights remain in force, also if the corporate structure is changed to a one-tier structure.</p>
<i>Number and geographical allocation of seats/votes</i>	According to Austrian law, a third of the seats on the supervisory board are taken by employee representatives.

Member countries must be represented among the employee representative seats according to their proportion of total company employment. Allocation has to be calculated by the D'Hondt method. If this method results in the allocation of more than one seat to one member state while others remain unrepresented, the same method has to be applied again to the total number of seats minus one. The remaining seat is to be taken by a so far unrepresented member state voted for by the SEWC.

*Level of participation*

The employee representatives have the same voting rights, payments and duties as other members. The right to vote on matters concerning relations between the board of directors and the company (for example, appointment, suspension, dismissal of members of the board of directors) is excluded, however.

**Other**

*Confidentiality obligation*

Yes. The confidentiality obligation remains valid for both SEWC members and the members of the board, also after expiry of the mandate.

*Protection of employee representatives*

Every SEWC member and member of the supervisory board is to be released from their working duties while exercising their mandate, without interruption of remuneration.

**Additional arrangement**

An additional arrangement concerning participation in the supervisory board was established in the course of preparations. Expecting management disagreement on the participation of non-Austrian representatives, the SNB agreed on a paragraph stating that Austrians will continue to nominate supervisory board members and will be supported by the other SEWC members. This agreement is to be valid until a transnational merger within the SE or 31 October 2009 at the latest. In this case, the SE standard rules will come into force.

As mentioned briefly above (see 2.2.2), the possible international allocation of seats on the supervisory board was disputed at the preparatory meetings. Austrian SNB members expected that the management would not agree to the possibility of a German trade union member on the board (see 2.3.3 for more

details). The additional arrangement is therefore the compromise developed by German and Austrian SNB representatives.

### **2.3.3. Management response**

The initial proposal agreed by the SNB was submitted to the management prior to the first round of negotiations.

#### *Main points of agreement*

The chair of the board opened the negotiations stating that the management by and large assented to the proposed agreement.

#### *Main points of disagreement*

On the other hand, Haselsteiner declared that he would not agree to the additional arrangement on the allocation of employee representatives' seats on the supervisory board. The management's reason for rejecting the proposed manner of allocation of seats on the supervisory board was explained as follows.

The allocation of the seats by the D'Hondt method would result in two seats for Austrian and one seat for German representatives. As the delegation of supervisory board members takes place in accordance with national law, this would have meant that the German representative was delegated under German law, which stipulates the nomination of candidates by the trade union. The SNB had already dealt with this concern in the additional arrangement paragraph, stating that supervisory board members would be delegated by the Austrians. However, the proposed paragraph stipulated the application of the Standard Rules after expiry of the additional arrangement. The Standard Rules would not take the CEO's concerns about the possibility of a German trade union official on the supervisory board into account. The CEO absolutely wanted to avoid this and therefore declared that this issue needed to be regulated in another way.

### **2.3.4. Content of the final agreement**

The final and signed agreement did not differ significantly from the initial agreement presented above. The only exception was supervisory board participation.

The additional arrangement was worked out in more detail. The main change was the follow-up scenarios after expiry. The agreement that employee representatives should be delegated to the supervisory board by the Austrian members and supported by the other SEWC members – by a 'binding nomination' ('bindende Nominierung') – remained the same. This agreement was to be valid until a transnational merger within the SE or at the latest 31 October 2009. After one of these events, the delegation and nomination system is to be renegotiated with the SEWC instead of the Standard Rules coming into force automatically.

### **3. CHANGES DUE TO THE TRANSFORMATION**

#### **3.1. Applicable legislation**

The registration of the SE is governed by Austrian legislation.

#### **3.2. Existing national information, consultation and participation rights**

The following table shows employee representation at workplace level in the countries represented in the SEWC in 2007.

Employee representation in the building industry is generally known to be rather difficult. Furthermore, there is hardly any detailed knowledge about the varying national information, consultation and participation rights – a shortcoming that the SEWC is aware of and keen to tackle (see also 4.2). Employee representation in CEE countries is rather weak or non-existent although an official structure does exist.

<b>Country represented in SEWC in 2007</b>	<b>Employee representation at workplace level by:</b>	<b>Annotations for the STRABAG case</b>
Austria	Blue-collar works council, white-collar works council, central works council	
Belgium	Trade union delegation/works council	
Czech Republic	Works council (= trade unionists)	
Germany	Central works council and group works council	
Hungary	Elected works council	
Netherlands	Elected works council	
Poland	Unclear which trade union is responsible for employee representation	Unclear which trade union is entitled to delegate representatives; legitimate delegate unclear; delegate elected by poll
Slovakia	Elected works council	
Slovenia	No employee representation structures	Legitimate delegate unclear; delegate elected by poll
Romania	No employee representation structures	Legitimate delegate unclear; delegate elected by poll

Croatia	No employee representation structures	Legitimate delegate unclear; delegate elected by poll
Serbia	Elected works council	
Switzerland	Elected works council	

Table 2: Employee representation at workplace level in the countries represented in the SEWC in 2007

### ***3.3. Existing transnational information, consultation and participation rights***

An EWC has existed since 1996 pursuant to Article 13 of the EWC directive. Article 13 EWCs are known to be of lower quality and subject to less binding provisions than EWCs based on Article 5 or 6 (Lecher et al. 2001). The EWC agreement was renewed in 2001.

Before SE registration, the EWC consisted of 13 members from seven countries (four Austrians, four Germans, and one member each from Belgium, Netherlands, Hungary, Czech Republic and Slovakia). The EWC agreement provided for an annual meeting and lays down information and consultation rights. Nevertheless, the chair of the SNB refers to the EWC as ‘purely an information body’.

### ***3.4. Changes due to the transformation***

#### ***3.4.1. Information and consultation at national level***

National information, consultation and participation rights have not been changed by the agreement.

#### ***3.4.2. Information and consultation through an SEWC***

As a result of the agreement, an SEWC was constituted on the same day and replaced the EWC. The SEWC had the following members: four from Austria, three from Germany and one each from Belgium (also representing the Netherlands), the Czech Republic, Hungary, Slovenia, Croatia, Slovakia and Poland.

At the constituting meeting, the chair of the Austrian group council was elected as chair; two German SNB members were elected as deputy chairs.

Further SEWC members have joined since constitution in May 2006, from Romania, Bulgaria, Switzerland and Serbia. In July 2007, the SEWC had 18 members from 13 countries, meaning that more countries are represented in the SEWC than in the EWC.

The select committee consists of six members: two from Austria, two from Germany, one from the Czech Republic and one from Hungary.

Information and consultation rights at transnational level have been expanded by the SEWC in comparison to the EWC. The SEWC's rights and competencies are described and specified in far more detail and in a more binding fashion in this agreement than in that of the EWC. For example, the EWC agreement does not provide for the delegation of supervisory board members, provides fewer members and stipulates fewer meetings. In contrast to the EWC agreement, the SEWC explicitly provides for the legitimacy and funding of external expert opinions. The chair of the SNB refers to the EWC as 'purely an information body', while the SEWC also has consultation rights.

### **3.4.3. Participation and transnational mix on the supervisory board**

In June 2005, the supervisory board consisted of nine members, a third of whom are delegated by the employee representatives. The employee representatives' right to nominate a third of the supervisory board members has not changed.

Board participation has not changed since the agreement. Two members of the supervisory board are also members of the SEWC.

In June 2005, all the employee representatives on the supervisory board were nominated from Austria. The representatives had not changed by July 2007. This is also due to the additional arrangement which grants the Austrian SEWC members the right to nominate the delegates.

As Strabag Bauholding SE was set up as a kind of holding company, according to the information provided by our interviewees the composition of the boards of the subsidiaries was not affected.

## **4. ANALYSIS OF THE NEGOTIATIONS**

### **4.1. Roles of the actors involved**

#### **4.1.1. Management role**

For a better understanding of the management's position and strategy, a brief account of Strabag SE's CEO, Hans Peter Haselsteiner, may be helpful.

Haselsteiner has worked for Ilbau (now Strabag) since 1972. In Austria, he is well known as a charismatic and successful manager, but also as a politician. From 1996 to 1998, he was chair of the Liberal Forum's parliamentary faction. He is also a leading negotiator of collective agreements. Haselsteiner acts as sole management representative; in the media, it appears that the management *is* Haselsteiner. Consequently, the whole company and management style are very paternalistic.

Haselsteiner and therefore Strabag SE are known for their European orientation, which they want to promote further. For example, Strabag was one of the first companies to implement an EWC, and the motivation behind setting up the SE was the promotion of the company's European identity. The GPA expert for international affairs describes Strabag as one of the best organised companies in the Austrian building sector and Haselsteiner as 'no trade union hater, but a tough negotiator who is able to give the unions a hard time'.

The management pursued two kinds of strategies in the process described. At the beginning, management tried to achieve an agreement by the least demanding route, turning the EWC into an SEWC by a simple agreement signed by the chair of the EWC without further discussion. The management relied on the validity of the procedure and agreement. The management did not expect any serious problems from this truncated process and were unimpressed by the objections of the trade unions. The position was passive and reminiscent of a waiting game.

The management agreed to the establishment of an SNB only in the course of the strategically important acquisitions of German companies in which trade union representatives were also involved. Besides the pressure resulting from the complaint brought before the Higher Court, the management feared bad publicity on the German market. The issue of the SNB expanded into the acquisition process. It seems that the management was willing to put up with employee involvement only on condition of expected gains from the German acquisitions.

However, after the decision, the management proved to be highly cooperative and endeavoured to pursue a legally correct process. It agreed to the entire agreement, which with one known exception was described as quite demanding and ambitious.

#### **4.1.2. Role of shareholders**

Possible impacts on stock exchange performance did not have any influence on the process, as Strabag SE has not been publicly listed since July 2003.

#### **4.1.3. Role of workers' representatives**

##### *National works councils*

Workers' representatives at company level played various roles.

On the one hand, there were the Austrian members of the central works council, who were also members of the supervisory board. In this capacity, they should have been informed about the planned SE registration at an early stage. Nevertheless, they did not object to the chosen procedure of the agreement with the EWC nor did they inform the national trade unions.

On the other hand, the German works council member actually triggered the process of intervention by informing the German IG BAU of the SE registration.

Belgian works council members also played an active role by taking the lead in the complaint that was lodged at the Higher Court.

Works councils and other employee representatives from the other countries, particularly CEE countries, have not played a decisive role, apart from participating in the SNB process.

In the course of the negotiations, German workers' representatives played the most important role as they were mainly affected by the disputed additional arrangement.

##### *EWC*

The EWC was not able to act on behalf of all its represented countries and companies. First, the chair of the EWC signed the initial agreement without calling a general meeting. While she passed on the proposed agreement to the other members, their reaction was not awaited or considered before the final signature.

On the other hand, the German EWC members were informed via the EWC's information channels and therefore were able to take action themselves. They turned to their trade union, which initiated the intervention.

The EWC as such did not play any further role in the process. However, the three Austrian representatives who joined the constituting meeting of the SNB included the chair and other members of the EWC.

#### **4.1.4. Role of trade unions**

##### *At national level – Austria and other countries*

The trade unions played a significant role in the whole process.

In Austria, the unions involved were the white-collar union GPA and the blue-collar union GBH. As most of Strabag's staff are blue-collar workers, in principle the GBH was the main union responsible, and it was informed about the EWC agreement and the expected SE registration. However, due to a lack of awareness of the possible consequences, it took no further action. The GPA, on the other hand, was far better prepared and better equipped in terms of personnel and know-how. By mutual agreement, therefore, the GPA took the lead in close cooperation with the GBH.

The German IG BAU was also closely involved in moving things forward, partly on its own initiative – such as the notification of the European Commission – and partly in cooperation with its Austrian and Belgian counterparts.

This highlights the crucial – and high level of – cooperation between the German, Belgian and Austrian trade unions and the Austrian Chamber of Labour. It made possible coordinated actions such as the joint hiring of legal expertise and the joint complaint to the Higher Court. In the end, the German trade union offered to put the complaint at the Higher Court on hold if an SNB was constituted in the course of the acquisition negotiations. This offer was accepted by the management.

The coordinated cooperation of the trade unions was crucial for their success. Similarly, this success was considered crucial for the European trade unions. As the SE model was a new one, the trade unions were keen on establishing 'good' agreements in the first SEs, which could serve as models for all subsequent SEs. On the other hand, an illegitimate but successful SE registration could set an adverse precedent.

The Austrian trade unions and the Austrian Chamber of Labour organised a preparatory seminar. An officer from the GPA together with an expert from the Austrian Chamber of Labour and an external legal expert worked out the initial draft of the agreement.

The trade unions were thus also important providers of expertise.

#### *At European level – European Building and Wood Workers' Federation*

The EFBWW managed the organisation of the seminar and its funding by the European Commission. The EFBWW also supported the management in identifying responsible and legitimate employees' representatives for delegation to the SNB. An EFBWW representative joined the workshop.

#### **4.1.5. Role of other external consultants (legal advisors)**

External consultants played an important role. The lawyer chosen was an expert on the Labour Constitution Act and became involved in the case at an early stage. She was part of the core team of the SNB and played a leading role

in the employees' initial proposal and the ensuing negotiations. She was hired and financed by the Austrian Chamber of Labour and the trade unions.

The preparatory seminar was held and coordinated by experts responsible for SE issues in the trade unions and the Austrian Chamber of Labour.

German participants in the SNB were also accompanied and consulted by a lawyer.

#### **4.2. Inhibiting factors in the process**

##### *Legitimacy of delegates to the SNB*

Employee representation differs widely between countries and locations. Especially in many CEE countries, organised employee representation is rather weak or does not exist at all. This raises the question of the legitimacy of the delegated SNB members.

The EFBWW provided assistance in identifying legitimate employees' representatives. Nevertheless, the selection of SNB delegates was rather 'informal': the Strabag management asked for a representative of the employees or, if none existed, someone who could be considered to represent the workforce. Due to a lack of sufficient knowledge of the different legal frameworks concerning employee representation in CEE countries, where Strabag has been active only for a short time, finding legitimate delegates was particularly hard. For example, according to information provided by one of our interviewees it was impossible to find an entirely legally correct way to select the delegation from Poland. He also adds that there may have been a 'bias' in the selection of delegates at the official request of the management.

In any case, while Hungary, the Czech Republic and Slovakia already had organised structures and legitimate representatives, this was not the case in Slovenia and Poland. The legitimacy of these 'informal' representatives was discussed critically at the constituting meeting of the SNB but due to the lack of any alternative did not lead to a different result.

##### *Different levels of awareness and understandings of worker participation*

The differing legal models and traditions are also reflected in the different cultures and understandings of workers' representation.

In the Strabag case, the SEWC chair reports major differences between German representatives, on the one hand, and Austrian representatives along with colleagues from CEE countries such as the Czech Republic, Slovakia, Poland and Hungary on the other. While Germans have the image of being overly critical, demanding and insistent, the others are more consensus-minded.

This also shows in the questionnaires returned by SNB members – the German replies were the most critical.

Austria seems to have the role of opinion leader for the CEE countries, which usually follow the proposals and direction of the Austrians. The chair of the SEWC thinks that this is due not only to the common imperial history, but also to a predominant respect for authority. As representatives of the company's home country the Austrians are respected as such an authority.

In general, it is noticeable that works councils or representatives of CEE countries did not play a decisive role apart from joining the SNB in the constituting and final meetings.

### *Language differences*

The working language of the SNB was German; it has remained German in the SEWC. While some of the members can speak German, others cannot. The Austrian representatives' English-language skills are poor.

German-language skills also influenced the selection of delegates to the SNB, as German speakers were preferred. As at least some employees in most Strabag affiliate locations speak German, one of these functions as a translator. At the same time, he or she is the first contact person – without being elected as a workers' representative.

The agreement provides for simultaneous translation during meetings of the SEWC. However, this practice has not been adopted for the social get-togethers after meetings, which are understood as being crucial for good cooperation. Therefore the SEWC foregoes professional translators and invites German speakers from the different countries instead, as they are also available in the evenings.

#### ***4.2.1. Developing a common understanding among workers' representatives***

The SNB consisted of members from eight different countries. The SEWC has 18 members from 13 countries, ranging from Belgium and Switzerland to Bulgaria and Serbia. The issues that arise in such an international setting are inevitably many and various. In fact, Strabag SE has to deal with extremely divergent income and living conditions, differing legal conditions for employee representation, different awareness levels and attitudes concerning employee representation issues and – last, but not least – language differences.

The chair of the SEWC considered communication and training to be the key to tackling intercultural differences, and questioned the SNB members accordingly. The main media of communication are phone and e-mail. Every SEWC member is provided with an office and a networked computer. Most communication takes place between German and Austrian members. As

described above, language difficulties mean that the first contact person is not a bona fide workers' representative but a German speaker.

Second, personal visits to individual countries are considered as very important, not only to show interest, but also to obtain first-hand knowledge of the local situation.

A seminar for all SEWC members is to be organised to bridge differences in the understanding of workers' representation. The topics of this seminar are the differing national conditions, knowledge of which is essential for better mutual understanding. Although – or because – the German representatives are generally opposed by Austria and the CEE countries, the chair of the SEWC emphasises the absolute necessity of mutual trust and the avoidance of hardened fronts.

An important aim of the SEWC is to set up and improve the organisation of workers' representations where such structures are lacking. The SEWC provides advice and guidance in their establishment and improvement. Although such processes take a long time to be initiated and get going, there have been significant developments in Slovenia and Croatia. Nevertheless, Romania, Bulgaria and Serbia are reported to be only in the early stages.

#### **4.2.2. Assessment of quality of negotiations and new structure**

##### *Supervisory board members*

The chair of the SEWC – and member of the supervisory board – is very happy with both the agreement and the work of the SEWC. Concerning the agreement, the SNB demanded '100% ... [things] that we thought we would never be able to agree upon with the management ... but we got it all – except for one point.'

In any case, he believes that this 'one point' – the agreement concerning supervisory board participation – has also found a satisfactory solution.

##### *Management*

The management was not prepared to give an interview and so we cannot present its perspective.

##### *Trade unions*

The representative from the Austrian white-collar union calls the *process* of participation negotiations 'exemplary' – in comparison with the rather 'demoralising' beginning. From the time the SNB was constituted, the process was straight out of the text book. He stresses the trade unions' transnational cooperation as crucial. Indeed, this Austrian trade unionist regards the process as a model for future negotiations on SE registrations.

Nevertheless, he admits a kind of 'sobering-up' process in the face of the ongoing lack of involvement of the trade unions in the further work of the SEWC, which resembles the lack of involvement at the beginning of the SE registration process.

#### *International SNB participants*

Participants from other countries who answered the questionnaire (Belgium/Netherlands, Czech Republic, Germany) say that they are generally satisfied with the establishment of the SNB and the outcomes of the process. They find that the countries concerned were represented 'adequately' and fairly; negotiations were 'precise' (CZ 2007a); '98% of the agreement finally signed was worked out together with all SNB members' (Germany 2007).

Concerning the work of the SEWC, the respondents are generally satisfied. All respondents point out that the SEWC is above all an important source of information concerning developments in the company and the board of directors. This flow of information had not been institutionalised for all countries before the SEWC; particularly for smaller countries – in relation to their proportion of the total workforce – and CEE countries, this is new and seems to be very helpful. However, the information channel from the different countries to the managerial level is also considered important (CZ 2007a). However, while some countries praise the access to information, Germany complains about its 'slowness' or even 'absence'.

Besides this, information exchange among the member countries is reported to be rewarding. Belgium considers the fact that it 'has a voice as a small country' the most important feature of the SEWC (Belgium 2007).

Nevertheless, there is room for improvement, especially in communication among SEWC members and employees in the member states (for example, CZ 2007b; Germany 2007). One respondent thinks that doubling the number of meetings from two to four would be helpful in order to build up trust and facilitate information flows (Germany 2007). This is considered important to speed up the 'sluggish' start to the SEWC. One Czech respondent feels that an improvement of communication and information flow would strengthen the position of employees' representatives at all levels of Strabag SE (CZ 2007a). Problems of mutual understanding – not only in terms of language, but also concerning the lack of common terms and knowledge of legal conditions in the different countries – are reported to make the SEWC's work difficult (Germany 2007).

Another common point is the desire for training, which would also provide for mutual knowledge and understanding of the SEWC's work (Germany 2007; Belgium 2007).

The Czech respondent would like a full-time works council representative, who would be able to represent employees' interests more effectively and professionally (CZ 2007b). He also points out the importance of strengthening employee representation in some CEE countries in order to improve the overall work of the SEWC.

While the Czech respondents feel that the SEWC can fulfil their expectations, this is not the case for the German representative who proposes the establishment of a concrete working programme and targets in order to improve the SEWC's work.

## 5. CONCLUSIONS

The Strabag case has become known for its special features in terms of setting up a proper representative body within an SE. Although these particularities deserve attention, they shall be referred to only briefly here as they have been treated extensively elsewhere (see Gagawczuk 2004; Pohl 2005; Cilento 2007).

It seems odd that the Strabag management first tried the least costly manner of implementing a representative body; at the second attempt, however, the management was very cooperative and granted a rather ambitious and demanding proposal to establish an SEWC.

Second, the crucial role of the trade unions in this case is eye-catching. It was the German trade union that initially triggered the course of intervention; subsequently, the Austrian, Belgian and German trade unions and the Austrian Chamber of Labour were in the forefront in taking, planning and organising further action: they hired legal expertise, notified the European Commission, planned the complaint to the Higher Court, arranged the establishment of the SNB, organised the preparatory seminar and worked out an initial proposal. Compared to this, the national works councils and the EWC members outside Austria played a relatively minor role. It is apparent that the Strabag case was important to the unions as they wanted to avoid an illegitimate employee involvement process becoming a precedent for subsequent SE registrations. On the other hand, the Austrian works council seemed to be content with the truncated process: works council and supervisory board members who received early notification of the planned SE registration did not see any need to take action or to notify the trade unions.

However, this may indicate the closeness of the relationship between Austrian management and works council. Other indicators are that the management declined an interview for this study, arguing that the works council is trusted to speak for the management, and that the works council chair reports that there have only ever been unanimous decisions on the supervisory board.

So, how 'European' is the negotiated agreement? How 'European' has the work of the SEWC turned out to be?

On paper, the agreement addresses the participation of all the countries concerned, by and large, as intended by the SE law: every country is represented, every country can ask to sit in with the select committee in discussing questions which particularly affect it and all communications are to be translated into the languages of all participants. However, there is one important exception: the allocation of seats in the supervisory board found an 'all-Austrian' solution. In principle, there should be a German member, but the so-called 'additional arrangement' prevents the Germans from actually delegating a member, forcing them instead to agree to the delegates nominated by the Austrian works council. The reason for this is the wish to avoid the application of German law, which might imply a trade unionist on the

supervisory board. On this issue, the Austrian members did not appear to be very supportive of their German colleagues' interests. So, while the composition of the European supervisory board is an important feature of the SE Directive, Strabag's supervisory board remains unaffected.

Descriptions of the work of the SEWC are dominated by Austrians and Germans. Members of the CEE countries are reported to go along with the directions of the Austrians. The works council chair attributes this to a greater respect for authority, which he finds more prevalent in these countries. Difficulties in understanding also play an important role: the works council chair quotes SEWC members from CEE countries as saying 'We only understand half of [the negotiations] anyway ... If you Austrians say so, it will be all right.' The Austrians seem to be quite content with their role as opinion-leaders. On the other hand, the Germans remain more critical of the mainstream work of the SEWC. Both during the negotiations and in the course of the SEWC's activities, the bulk of communication takes place between Austrians and Germans.

On the other hand, information and consultation rights are mostly exercised rather informally between Austrian management and works councils. Most of the information originates from participation in the supervisory board or through personal contact between the Austrian SEWC members and the company directors.

Another reason for the low profile of SEWC members from the CEE countries is the generally weaker or even non-existent employee representation, which of course affects activity in the SEWC. The interests of Serbia or Romania, with weak or no employee representation at all, differ greatly from the concerns of well-organised German members, as do living conditions and income issues. This is also reflected in the questionnaire replies: while Germans complain about the slowness or absence of information, the Czech Republic is happy that there is any flow of information at all.

The quality of the SEWC's work, the representation of CEE countries and therefore also its European orientation are dependent on the quality of the employee representatives' work in all – and particularly the CEE – countries. Much work has still to be done in the latter. On the one hand, the SEWC makes such shortcomings visible; on the other, it also has the personal and financial resources to effectively support the development of such structures in the CEE countries. The need to develop a common understanding is clear. A first step in tackling the lack of know-how and understanding of representation issues in the different countries is a joint seminar to be organised by the SEWC. Another SEWC member has also proposed more meetings to facilitate development of the still lacking mutual understanding and trust.

The author of this case study cannot avoid the impression that the trade unions were far more interested in establishing a proper SNB and in the resulting agreement than the majority of the national works councils. The cooperation

between Austrian management and works council and also the dominant role of the Austrian representative seem to render the model agreement to some extent obsolete. While the trade unions are content with the 'presentable agreement', due to the attitude of most SEWC members the SEWC cannot really make adequate use of the rights that have been granted. The reasons for this may be the abovementioned 'cooperation' and lack of awareness among SEWC members. However, all evaluations must be treated with great caution as the SEWC is still a young body and judgements may be premature.

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## ANNEX

### Timeline of the process

Date	Event
August 2004	Agreement on employee representation in the SE signed by chair of EWC
1 September 2004	Announcement of planned SE registration in the supervisory board
September 2004	German IG BAU is informed of the planned SE registration
4 October 2004	General shareholders' meeting decides on the transformation of Bauholding Strabag AG into an SE
5 October 2004	Lawyer informs the relevant judge about the lack of employee representation
12 October 2004	Registration of Bauholding Strabag SE
Autumn/Winter 2004	Joint complaint lodged against registration
Autumn/Winter 2004	European Commission, DG Employment and Social Affairs, notified by German IG BAU
March 2005	Management agrees to SNB
9 November 2005	Constituting meeting of SNB
11 – 13 January 2006	Preparatory workshop for SNB members
November 2005 – May 2006	Legal time frame for negotiations (according to SE Directive)
April 2006	Actual time of negotiations
4 May 2006	Signature of agreement