



SEEUROPE - NATIONAL REPORT “THE EUROPEAN COMPANY IN SPAIN”

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1. LEGAL DEVELOPMENTS

Transposition of the European Company Statute (European Regulation 2157/2001 of 8 October 2001) into Spanish company legislation took place on 1 November 2004. The transposition of Directive 2001/86/EC on employee involvement to the Spanish legal framework was more complex. Among the issues in the political debate among the political parties and the social partners, prior to the passing of the regulation on employee involvement by the Congress, the following should be mentioned:

- (i) The election of the members of the special negotiating body (SNB) to represent the interests of the workforce (Article 29), the allocation of board seats (Article 30) and the participation of external trade union representatives in the SNB (Article 29).
- (ii) The financing of experts, which is limited to ‘at least one expert’ (Article 9) and the budget of employee representatives in the SNB and at board level, including the number of paid hours, which was finally established at 60 (Article 31).
- (iv) The possible renegotiation of the SE agreement in case of structural change in the company (Article 26).
- (v) The introduction of further provisions on confidentiality.

The transposition of Directive 2001/86/EC was completed in 18 October 2006 through Law 31/2006 on the involvement of employees in European limited companies and European cooperatives (*Ley 31/2006, de 18 de octubre, sobre implicación de los trabajadores en las sociedades anónimas y cooperativas europeas*). It was approved by the Congress with the support of all groups, led by the Socialist Party, with the exception of the conservative Partido Popular. It involved the adaptation of some technical aspects of the Law on the prevention of risks in the workplace (*Ley 31/1995, de 8 de noviembre sobre prevención de riesgos laborales*) and in the preamble of Article 129.2 of the Spanish Constitution, related to the promotion of company participation, the promotion of cooperatives and the access of employees to ownership of the means of production (for more information, see Country Report Spain: available at: <http://www.worker-participation.eu/content/view/full/1229>).

2. CURRENT INDUSTRIAL RELATIONS TRENDS IN SPAIN

Industrial relations in Spain are currently strongly influenced by the economic crisis and its impact on the labour market. The unemployment rate has been sharply rising since late 2009 and in the first quarter of 2010. The Spanish figures are among the worst in the whole European Union, with a 19.5 per cent unemployment rate and more than four million people without a job. The labour market situation has caused considerable political tensions between the social partners and the government. The most important process of social concertation on economic issues at the national level, namely the AINC – multisectoral framework agreement for collective bargaining (*Acuerdo Interconfederal para la Negociación Colectiva*) – has been blocked for 2009 as a consequence of the unstable environment. In recent times, two major political issues affecting industrial relations have entered into the public debate: (i) the issue of pensions and the measures needed to preserve its future stability in the current context of crisis and population ageing ; and (ii) a new and deeper reform of the labour market, beyond that of 2006. This new reform should be aimed at solving the structural inefficiencies and poor performance of the Spanish labour market. Some voices in this latter debate have raised the possibility of including legislative reforms to introduce representation rights for workers at board level as a mean of increasing democratic control over companies' activities. However, this possibility has not been considered as a central point in the reform agenda.

3. ACTIVE EUROPEAN COMPANIES (SES) IN SPAIN

The establishment of new European Companies in Spain has been extremely sporadic. In fact, it could be argued that it has not really started yet. According to official data obtained at the Central Commercial Registry Office, there are only two active European Companies: *Arcelor Steel Trade SE* and *Paypal SE Sucursal en España*.

The first, *Arcelor Steel Trade SE*, was officially registered as a European Company on 14 July 2008 (published 28 July 2008). The firm (reference number 363745 at the Commercial Registry Office and registered address Lugar Residencia La Granda, Gozón, Principality of Asturias), is a part of the multinational *Arcelor-Mittal Steel* in Spain. According to preliminary research on the specific activities and dimensions of *Arcelor Steel Trade SE*, the firm seems to have no real operations and no employees. Therefore it can be classified under the category of 'virtual' or 'shelf' European Company.

As to the second, *Paypal SE Sucursal en España* was registered as a European Company on 3 April 2009 (published 22 April 2009). The firm (reference number 190063 in the Commercial Registry Office and registered address Av. Europa, 4 – Planta 1, Parque Empresarial L, Alcobendas, Madrid) is part of the financial services multinational *Paypal*, its objective being to promote the company in Spain. To date, no preliminary research has been done to determine its actual operations, dimensions and workforce.

4. APPROACH OF TRADE UNIONS AND EMPLOYERS TOWARDS SES

a. Employers' association (CEOE) and firms

The position of the Spanish employers' association on the development of European Companies remains the same as it was at the beginning of the debate in mid-2004. The

SE Statute is perceived as an excessively sophisticated and complex instrument with no clear tax and fiscal incentives and therefore unlikely to persuade more Spanish-owned firms to become SEs.

Directive 2001/86/EC on employee participation is seen as an additional reason for the underdevelopment of SEs in Spain. From the perspective of employers, it is regarded as a potential disruptor of industrial relations at the firm level. It introduces a number of *alien* elements into the domestic framework, particularly the possibility of board-level participation. In the Spanish industrial relations tradition, there is no general right of board-level participation and employee representation at this level, where it has become established only in a – diminishing – number of public sector (or privatised) companies.

An additional argument for the lack of interest on the part of Spanish companies in the SE Statute is to be found, according to the employers' association, in the low number of firms meeting the requirements of SE legislation and therefore potentially covered by it. The dominant structure, dimensions (*'pocket multinationals'*) and internationalisation path pursued by Spanish firms is another important factor to be considered when approaching the SE issue.

As to other related processes, it is worth noting that the compliance rate of Spanish-owned firms with Directive 94/45/EC on European works councils is well below the EU average, with only eight out of an estimated 45 eligible companies with a European works council already established. One might consider that these eight companies would be the most likely candidates to get on the SE path. However, as was pointed out by a representative of the Spanish employers' association, the number of consultations of the International Department of CEOE on the issue of SE legislation by individual firms is particularly low. A number of companies approached CEOE in 2006, after the transposition of the Community Regulation. Three of them (two in the financial sector and one in the industrial sector) showed some initial interest in the possibility of becoming an SE, but after evaluating the Community Regulation in detail decided not to proceed. According to CEOE, the reluctance of these firms was (mainly) due to technical reasons. The creation of an SE was considered 'too hard to follow and too complicated'. Also, they were not able to identify real economic advantages in establishing an SE, finding no expected reductions in departmental and administrative costs for their operations at European level.

A final and very interesting point is that CEOE was not aware of the existence of two active European Companies in Spain in early 2010. Both *Arcelor Steel Trade SE* and *Paypal SE Sucursal en España* were established as European Companies without the supervision (and even knowledge) of the Spanish employers' association.

b. Trade unions (CCOO and UGT)

The Spanish trade unions still regard the SE Statute and its associated Directive on employee board-level representation as an opportunity to introduce and, in the medium term, to consolidate employee representation at the board level and, consequently, in corporate decision-making. However, both confederations, Comisiones Obreras (CCOO) and Unión General de Trabajadores (UGT), are sceptical about the actual impact of SE legislation on the Spanish industrial relations landscape. As already mentioned, Spanish companies are not particularly motivated to get engaged in SE processes as they see no clear incentives.

Considering the reactive position of the trade unions regarding SE legislation (the lack of rights of initiative), both CCOO and UGT are now concentrating more on other, 'more dynamic' aspects of the European and international industrial relations agenda, namely European works councils and framework agreements in transnational companies. As the number of Spanish SE companies is very low, the involvement of employee representatives in the process takes place through subsidiaries. The metalworking and construction federation of UGT (MCA-UGT) is currently developing a database with the details of active SE companies within these two sectors in Spain.

The issue of SE legislation and the possibilities for the representation of workers' interests it has opened up has also brought about an interesting intra-trade union debate on the allocation of the remuneration of employee representatives in boards. Also, the two trade unions have concluded an interconfederal agreement to be applied in case of the election of employee representatives to European works councils and boards of directors. This agreement reserves the first seat to the most representative organisation at national level and blocks the possible involvement of representatives from other, minority unions.

5. DISCUSSION. WHY SO FEW SES AMONG SPANISH FIRMS?

Considering the positions of the social partners, it would be possible to put forward a number of explanations for the underdevelopment of SEs in Spain.

(i) *Lack of transparency of SE legislation.* Legal mechanisms for becoming a European Company are perceived as too obscure and complex by firms, particularly by small and medium-sized multinational companies ('pocket multinationals'), which are dominant in Spanish industry, for which the procedures for establishing an SE appear to be technically problematic and costly.

(ii) *Uncertain advantages of SE legislation.* Individual firms do not find actual economic (tax and fiscal) or operational incentives to initiate an SE process and neither does the employers' association. Consequently, CEOE has not favoured or promoted the extension of this solution among its affiliates. It has only acted as a service consultant when individual companies have asked for information on SE legislation.

(iii) *Cultural values and industrial relations tradition.* Although present in a number of large public and privatised firms and savings banks, there is no tradition of employees' representation at board level in Spain. Consequently, the incorporation of this issue in the *acquis* of industrial relations in Spain through SE companies is considered problematic by employers ('the main problem is not necessarily the Statute but its associated Directive'). Also, labour expectations with regard to the exact meaning and possibilities opened up by employee board-level participation are not entirely clear, with significant differences among industries and trade union federations.

(iv) *The ball is always in the employers' court.* The nature of the decision to become an SE, which is a prerogative of individual employers, hinders the establishment of new SEs in Spain. In the absence of further governmental input on this issue (which is not expected at all) and given the lack of rights of initiative for the labour side (as recognised in the case of European works councils), the SE process in Spanish owned firms will remain stagnant.