

February 2011

Editorial

2012: a critical year for worker participation

The Mayas scheduled the end of the world for 2012. While there are serious doubts about such a prophecy, to say the least, what is sure is that 2012 will be a critical year for the issue of worker participation and its regulation at European level. The Commission's annual work programme indicates several initiatives in this regard: opening (in the case of the European Cooperative Society-SCE) and continuation (in the case of the European Company-SE) of Treaty-based consultations of social partners on possible revisions of 2001/86/EC and 2003/72/EC Directives on employee involvement. Moreover, 'the Commission is currently reflecting on possible amendments to the SE Statute with a view to making legislative proposals in 2013, if appropriate', states the 2012 roadmap devoted to the SE 2157/2001 Regulation. On its side, the European Parliament is debating a recommendation to the Commission on a 14th company law directive on the cross-border transfer of company seats. A vote on a draft report took place in the Legal Affairs committee in mid-December and discussion at a plenary session is foreseen on 1 February.

All these initiatives are taking place in a context in which worker participation rights and, especially, board-level employee representation (BLER) rights are finding themselves under pressure. The speeding-up of privatisation processes at national level has led to a dramatic reduction (in Ireland, Poland and Spain), if not a total disappearance (in Malta) of the number of board-level employee representatives in countries where the regulatory framework is/was restricted to the public sector. Changes in national company law through the introduction of the one-tier system (a single board of directors) were accompanied by a weakening of BLER rights in Hungary and Slovenia. More drastic situations can be found in Poland and Czech Republic where plans to eliminate binding regulations on BLER are likely to be adopted.

At European level, abuses of the SE statute in order to ‘freeze’ BLER have been reported, to a marginal extent in Germany, but to a much greater extent in the Czech Republic with the spread of so-called ‘shelf’ SEs. The latest version of the proposal for a European Private Company-SPE Statute, even significantly amended as regards employee involvement compared to its initial version, still does not offer enough safeguards of pre-existing national BLER rights. Finally, freedom of establishment, combined with the possibility of locating a company’s registered and real seat in two Member States might, in the long run, significantly undermine national BLER rights, with companies choosing to register in BLER-free countries, while operating elsewhere.

Consultations and potential negotiations on SE and SCE reviews, added to the abovementioned Parliamentary initiative and the ETUC’s call for a European minimum standard for employee involvement (complemented by its December resolution) may help to rebalance the situation. The coming months will show whether 2012 turns out to be the year of a paradigm shift toward a stakeholder approach just when the Commission is reflecting on a EU corporate governance framework and company law perspectives.

Although 2012 looks challenging, the SEEurope team and network members would like to wish you all the best for the New Year.

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