

Stockholm
May 23, 2010



Register ID Number: 4129929362-47

NFU response to the Consultation on the results of the study on the operation and the impacts of the statute for a European company (SE)

About NFU

The Confederation of the Nordic Bank, Finance and Insurance Unions (NFU) is an organisation for co-operation between trade unions that organise employees in the banking, finance and insurance sectors in the five Nordic countries. At present, eight trade unions are affiliated to the NFU; two in Denmark, two in Finland, two in Sweden, and one in each Iceland and Norway. Through these trade unions, NFU represents 160 000 employees in the Nordic financial market.

General comments

NFU is of the opinion that the role of the employee perspective is somewhat downplayed in the report. The prerequisites in Directive 2001/86 regarding information, consultation and participation are discussed in a context of problems, rather than possibilities. NFU is of the opinion that the SE regulation cannot work without the rights for employees in the accompanying Directive, and that these rights should be perceived as beneficial to all stakeholders. Employees too want strong and successful companies, and it is therefore of the utmost importance to see the interests of employees, consumers and industries as integrated.

Corporate governance and corporate social responsibility must not be seen as isolated issues. This has, for example, also been pointed out in the European Parliament's resolution on further consolidation in the financial services industry, where it is stated that market participants should take into account their social responsibility during M&A and restructuring activity. Good governance is also about developing the inclusion of employees in the decision-making and strategic discussions on the future of the company. The principle of employee participation should, as NFU sees it, be an integral part of the corporate governance agenda. Employees are key stakeholders in the companies, and they also represent the link between the companies and their customers.

(V) Possible follow up

(8) Do you agree with the study's recommendations for possible amendments of the SE Regulation? Which recommendations are the most important in your view? Do you have any other suggestions for amendments of the SE Regulation that would increase its attractiveness for businesses (e.g. for SMEs, groups operating across borders)?

To NFU, one very important matter is the issue referred to in art. 12, namely the compulsory negotiation of employee involvement prior to the registration of an SE. This is of particular importance in relation to the discussion regarding the shelf SEs.

The study refers to Article 12(2) of the SE Regulation which provides that "an SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded". Furthermore, paragraph 6 of the SE Directive stipulates: "information and consultation procedures at transnational level should nevertheless be ensured in all cases of creation of an SE" and Article 1 paragraph 2 states that "arrangements for the involvement of employees shall be established in every SE (...)".

According to the study, these provisions of the SE Statute do not contradict the principle that there is no necessity for negotiations when there are no employees in the companies concerned at the time of creation of the SE. The study also refers to judgments by German courts that support the notion that the establishments of shelf SEs are in order, with the possibility to start up negotiations on employee involvement when the shelf SE is activated.

The possibility to create shelf SEs for future activation is in NFU's opinion contrary to the strict formulations in Directive 2001/86. NFU urges the Commission to further research the use and underlying drivers behind the creation of shelf SEs, and how the shelf SEs are perceived from an employee participation perspective in the various member states. We cannot rely on decisions by German courts to conclude that the creation of shelf SEs is in line with European legislation on employees' rights.

There must be good, objective and sound reasons to allow the formation of shelf SEs, and it must clearly counterbalance the negative aspect of the matter. The lack of clear rules on this issue makes the legal framework less foreseeable since such regulations makes it possible to circumvent the employees' guaranteed right to exert influence.

If the creation of shelf SEs should be considered to be in line with the Directive, then it is of the utmost importance that there are rules governing the activation of these companies on a European level, and not leave it to the discretion of national courts. Activation of shelf SEs



must be accompanied by rules on employee influence that, at least, are in line with the ones in the original Directive.

Yours faithfully

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